121-310

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 194.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP, AND LUKE HUISKAMP, PARTNERS AS HUISKAMP BROTHERS, INTERPLEADERS, PLAINTIFFS IN ERROR,

vs.

THE MOLINE WAGON COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 29, 1883.

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1 *Citation.*

UNITED STATES OF AMERICA, *sct:*

To the Moline Wagon Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1883, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, in the matter of the interplea of Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, partners under the firm name of Huiskamp Bros., as interpleaders, against you, The Moline Wagon Company, in the case in the said court wherein you, The Moline Wagon Company, are plaintiffs and Jacob Rummel and E. R. Cutler are defendants, and said Huiskamp Bros. are interpleaders and plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment against said plaintiffs in error in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arnold Krekel, judge of the circuit court of the United States for the western division of the western district of Missouri, this 9th day of June, A. D. 1883.

A. KREKEL, *Judge.*

We accept due & legal service of this citation this 9th day of June, 1883.

MOLINE WAGON COMPANY.
JAMES J. PARKS, *of*
By PARKS & PLEASANTS, &
GAGE & LADD, *Att'ys.*

2 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the western division of the western district of Missouri, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you between Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, partners under the firm name and style of Huiskamp Bros., as interpleaders, and The Moline Wagon Company, a corporation, as plaintiffs in the case of The Moline Wagon Company, a corporation, against Jacob Rummel and E. R. Cutler, a manifest error has happened, to the great damage of the said Huiskamp Bros., as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that [then], under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things con-

cerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first day of the next term of our said Court, commencing on the second Monday of October, 1883, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 9th day of June, A. D. 1883.

{ Seal of the United States Circuit Court for the Western District of Missouri, Western Division. }

H. C. GEISBERG, *Clerk.*

Allowed by—
A. KREKEL, *Judge.*

3 UNITED STATES OF AMERICA, *sct:*

In obedience to the within writ, I hereby certify and transmit a full and true transcript of the record in the cause therein named to the Supreme Court of the United States.

Done this 16th day of June, A. D. 1883, at office, in Kansas City, in the western district of Missouri.

H. C. GEISBERG, *Clerk,*
By WARREN WATSON,
Deputy Clerk.

4 UNITED STATES OF AMERICA, *sct:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri in a cause wherein the Moline Wagon Company is plaintiff and Jacob Rummel and Ed. R. Cutler are defendants, and Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp *and* interpleaders, claiming the fund arising from the property seized under the attachment. At law.

5 Be it remembered that heretofore, to wit, in vacation of the circuit court of the United States in and for the western division of the western district of Missouri, and on the 31st day of March, A. D. 1880, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* J. RUMMEL *et al.*

This day a transcript in the above cause is received and filed. Said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
County of Putnam, }

Pleas before the circuit court of Putnam county, at a term begun and holden in the town of Unionville, county and State aforesaid, on the 15th day of March, A. D. 1880, before the Hon. Andrew Ellison, judge of the 27th judicial circuit of the State of Missouri.

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. CUTLER, Partners in the Firm Name of J. Rummel & Son, Defendants.

Be it remembered that heretofore, to wit, on the 8th day of January, A. D. 1880, a petition was filed in the above-entitled cause in the office of the clerk of the circuit court in and for the county of Putnam in words and figures following, to wit:

6 Putnam County Circuit Court. March Term, 1880.

THE MOLINE WAGON CO., a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. CUTLER, Partners in the Firm Name of J. Rummel & Son, Defendants.

Plaintiff states that it is a corporation, duly organized under the laws of the State of Illinois, and composed of the following members, to wit, —— —— and —— ——; that on the 15th day of March, 1879, and continuously for a long time prior thereto, the defendants were copartners, doing business at Unionville, Missouri, under the firm name of J. Rummel & Son.

That on said last-named day defendants, by their firm name of J. Rummel & Son, made, executed, and delivered to this plaintiff their promissory note, herewith filed, by which they promised, for value received, to pay to plaintiff, on January first, 1880, the sum of seventeen hundred and fifty-three dollars and fifty cents, with interest thereon at the rate of ten per centum per annum, interest after maturity, which said sum and all the interest thereon are due this plaintiff, unpaid, and for which plaintiff asks judgment.

Plaintiff, for a second cause of action against defendants, states that on the 12 day of July, 1879, the plaintiff being a corporation, as stated in the first count of this petition, and the defendants being copartners doing business at Unionville, Missouri, as in said
7 first count stated, the said defendants, by their firm name of J. Rummel & Son, made, executed, and delivered to this plaintiff their promissory note herewith filed, by which, for value received, they promised to pay plaintiff on the first day of January, 1880, the sum of fifteen hundred and eighty-four dollars and fifty cents, with ten per cent. interest per annum after maturity, which said sum, and all the interest thereon, are now due plaintiff and wholly unpaid, and for which plaintiff asks judgment.

Plaintiff, for a third cause of action against defendants, states that on the 16th day of October, 1879, the plaintiff being a corporation,

as stated in the first count of this petition, and the defendants being copartners, doing business at Unionville, Missouri, as in said first count stated, the said defendants, by their firm name of J. Rummel & Son, made, executed, and delivered to this plaintiff their promissory note herewith filed, by which, for value received, they promised to pay this plaintiff, four months after date, the sum of sixteen hundred and ninety-two dollars and eleven cents, with ten per cent. interest per annum, after maturity, which said sum of money and note will be due this plaintiff on the 16th day of February, 1880, which is wholly unpaid, and for which plaintiff asks judgment.

Plaintiff, for a fourth cause of action against defendant, states that on the 15th day of November, 1879, this plaintiff being a corporation, as stated in the first count of this petition, and the defendants being copartners doing business at Unionville, Missouri, as in said first count stated, the defendants, by their firm name of J. Rummel and Son, made, executed, and delivered to this plaintiff their
8 promissory note herewith filed, by which, for value received, they promised to pay plaintiff, four months after date, the sum of sixteen hundred and fifty dollars, with ten per cent. interest per annum after the maturity thereof, which said sum of money and note will be due on the 15th day of March, 1880; which sum is wholly unpaid, and for which plaintiff asks judgment.

Plaintiff, for a fifth cause of action against defendants, states that on the 19th day of December, 1879, plaintiff being a corporation, as stated in the first count of this petition, and the defendants being copartners doing business at Unionville, Missouri, as in said first count stated, the said plaintiffs sold and delivered to defendants, at their request, one Moline wagon of the value of fifty-two dollars and fifty cents, an account of which is hereto attached, for which defendants promised to pay plaintiffs on the — day of ——, 18—, the said sum of fifty-two dollars and fifty cents.

That defendants have failed, neglected, and refused to pay for said wagon, although plaintiff have often demanded the same; that said sum is now due plaintiff, and plaintiff asks judgment for the same.

BELL & MARSHALL,
FRED. HYDE, *Att'ys.*

And at the same time, to wit, January 8th, 1880, there was also filed with the clerk of the circuit court on the part of said plaintiff an affidavit in words and figures following, to wit:

9 In Putnam Circuit Court. March Term, 1880.

THE MOLINE WAGON COMPANY, Pl'ff,
against
JACOB RUMMEL and E. CUTLER, Def'ts.

This affiant states that the plaintiff in the above-entitled cause has a just demand against the defendant therein, now due, except one note for sixteen hundred and ninety-two dollars and eleven cents, due February 16, 1880, and one note for sixteen hundred and fifty

dollars, due March 15, 1880, and that the amount which affiant believes the plaintiff ought to recover, after allowing all just credits and set-offs, is sixty-seven hundred and twenty-two dollars and sixty-one cents, and that this affiant has good reason to believe, and does believe, that the defendants have fraudulently conveyed or assigned their property or effects so as to hinder and delay their creditors; that the defendants have fraudulently concealed, removed, or disposed of their property or effects so as to hinder or delay their creditors; that defendants are about fraudulently to convey or assign their property or effects so as to hinder or delay their creditors.

N. S. KETCHUM.

Subscribed and sworn to before me this 8th day of January, 1880.

PETER GREGGERS, *Clerk.*

And at the same day, to wit, January 8th, 1880, there was filed in the clerk's office of the circuit court aforesaid an attachment bond in words and figures following, to wit:

10 *Attachment in a Civil Action.*

MOLINE WAGON COMPANY, Plaintiff,
against
E. CUTLER & JACOB RUMMEL, Defendants.

We, The Moline Wagon Company, as principals, and Ira D. Noggle, James J. Parks, [and] N. S. Ketchum, as securities, acknowledge ourselves to be indebted to the State of Missouri in the sum of thirteen thousand and five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators. The condition of the above obligation is that whereas The Moline Wagon Company, as plaintiffs, are about to commence a suit by attachment in the circuit court of Putnam county, State of Missouri, against Jacob Rummel and Ed. Cutler, defendants, returnable to the next March term thereof, wherein the sum sworn to is six thousand seven hundred and twenty-two dollars and sixty-one cents, now, therefore, if the said plaintiffs shall prosecute their action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendants or found to have been received by the plaintiffs and not justly due to them, and pay all damages and costs that may accrue to any defendant or garnishee by reason of the attachment, or any process or proceeding in the suit or by reason of any judgment or process thereon, then this obligation is to be void; otherwise to remain in full force.

Witness our hands and seals this 8th day of January, A. D. 1880.

MOLINE WAGON COMPANY, [SEAL.]
By JAMES J. PARKS, *Att'y.* [SEAL.]
JAMES J. PARKS. [SEAL.]
N. S. KETCHUM. [SEAL.]
11 IRA D. NOGGLE. [SEAL.]

Approved this eighth day of January, 1880.

PETER GREGGERS, *Clerk.*

Whereupon a writ of attachment was issued to the sheriff of Putnam county on the 8th day of January, 1880, in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Putnam, }

The State of Missouri to the sheriff of the county of Putnam, Greeting:

We command you to attach Jacob Rummel and Ed. Cutler by all and singular their lands and tenements, goods, chattels, rights, moneys, credits, evidences of debt, and effects, or so much thereof as shall be sufficient to satisfy the sum of six thousand seven hundred and twenty-two dollars and sixty-one cents, with interest and costs of suit, in whose possession soever the same may be found in your county, and that you summon Jacob Rummel and Ed. Cutler to be and appear in our circuit court of said county of Putnam on the first day of the next term thereof, to be holden at the court-house in the town of Unionville, in said county of Putnam, on the third Monday in March, 1880, then and there to answer the petition of the Moline Wagon Company, a copy of which is hereto annexed, and that you summon all the persons that you shall find in the possession of goods, money, or effects of the defendant not actually seized by you, and all debtors of the defendant, and such other persons as the plaintiff or his attorney shall direct as garnishees to be
12 and appear in our said court at the time and place aforesaid, then and there to answer such allegations and interrogatories as may be exhibited against them; and have you then and there this writ.

Witness Peter Greggers, clerk of said court, with the seal thereof hereto affixed, this 8th day of January, A. D. 1880.

[SEAL.] PETER GREGGERS, *Clerk.*

And afterwards, to wit, on the 13th day of March, 1880, the sheriff returned the writ, with his return in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Putnam, }

The within writ came to my hands on the ninth day of January, 1880, on which day I executed the same in said county by delivering to defendant, Jacob Rummel, a copy of the writ and petition in this cause, and by delivering to defendant, Ed. R. Cutler, a copy of this writ. I further executed this writ in the county of Putnam aforesaid by levying upon and seizing as the property of defendant, Jacob Rummel, all of the following-described real estate, situated in said county, to wit: The west one-third of lot seven, in block two, in original plat of Unionville, including the scales thereon, of which attachment of said real estate I have filed an abstract in the office of Peter Greggers, circuit clerk and recorder of said county, showing the names of the parties to said suit, the amount of the debt sued for, the date on which I levied said attachment upon said real estate, together with

a description of said real estate, for the purpose of being recorded,
13 and further executed this writ by seizing and taking into my possession, as the property of said defendants, the goods and chattels, the same being described in the schedule herewith filed. See invoice of Rummel and Son's dry-goods store, Unionville, Mo., Jan. 16th, 1880, attached to this transcript, numbering 38 pages, and made a part hereof. And [I] further executed this writ in said county, at 10 o'clock and 45 minutes a. m., on said day, by attaching in the hands of Geo. W. Barnett and A. D. Christy the notes and accounts belonging to said Jacob Rummel, the same not being accessible, and by declaring to them that I attached said goods and property in their hands, and by summoning them, as garnishees, to appear at the return term of the writ to answer the interrogatories which may be exhibited by the plaintiff. I further executed this writ in the said county on the 21- day of January, 1880, by attaching as the property of Jacob Rummel, the said defendant, the following-described goods and chattels, the same being found in the possession of William Cassaday: One wooden building, called a warehouse, used for storing grain, and situated near the Burlington and Southwestern railroad depot, in said county, and taking the same into my possession, and by declaring to said Cassaday that I attached the said property in his hands, and by summoning him, as garnishee, to appear at the return term of the writ to answer the interrogatories which may be exhibited by the plaintiff, the same being done at 10 o'clock and 20 minutes a. m. of said day. And further I executed this writ in the said county on the persons hereinafter named, and on the days and times stated against each name respectively, by declaring to each and every of them, debtors of said E. R. Cutler and Jacob Rummel, named to me by
14 plaintiffs in this suit, that I attached in their hands all debts due from them to the said defendants, or either of them, or so much thereof as was sufficient to satisfy the debt, interests, and costs, and summoning them, as garnishees, to appear at the return term of the writ to answer such interrogatories as may be exhibited by the plaintiff.

Jan'y	9, 1880, at 10.40 a. m.	Ed. R. Cutler.
	9	F. M. Staley.
	11.40	S. S. Bennett.
	2½ p. m.	Wm. Cassaday.
	11½ a. m.	Wm. Hornbaker.
	9¼	F. H. Wentworth.
	10, 10½	Ketchum Brothers.
	10, 5 p. m.	F. M. Lightfoot.
	26	S. F. Fry.
	23	Abraham Mullenax.
Feb.	10	F. E. Mullenax.
Jan.	20	A. J. Jones.
Feb.	20	Michael Minicks.
	7	John A. Bradshaw.
Jan.	26	Daniel Pickett.

24 ---------- Thomas Lynch.
19 ---------- Sarah Brown.
19 ---------- Joseph Robinson.
Feb. 20 ---------- Benj. Shaw.
Jan. 26 ---------- William Shaw.
Feb. 9, 1880 ---------- Thos. G. Milton.
---------- John W. Smith.
Jan. 28 ---------- Elihu Stewart.
Feb. 22 ---------- John H. Guffey.
22 ---------- C. Bird Guffey.
Jan. 14 ---------- John M. Shoemaker.
15 Jan. 27, 1880 ---------- Joel Allison.
26 ---------- C. A. Gillum.
Feb. 18 ---------- John S. Foley.
Jan. 15 ---------- John M. Pollock.
Feb. 19, 1880 ---------- John B. Sturged.
Jan. 17, 1880 ---------- Ephraim Choate.
15 ---------- George Phillips.
31 ---------- John B. Guffey.
Feb. 20 ---------- Tulle Anderson.
Jan'y 9 ---------- Huiskamp Brothers.
Mar. 11 ---------- Wm. Smith, Jr.
Mar. 11 ---------- Wm. Smith.
Mar. 10 ---------- Richard Summers.
Mar. 10 ---------- Wm. Allison.
Mar. 10 ---------- J. T. Banthouse.
Mar. 11 ---------- W. S. Meyers.

C. BIRD GUFFEY,
Sheriff, Putnam Co., Mo.

To said return*ed* was also attached the invoice of Rummel & Son's dry-goods store, Unionville, Mo. The original is sent with this transcript.

And afterwards, to wit, at a regular term of the circuit court begun and held at the court-house in the town of Unionville, Putnam county, Missouri, on the 15th day of March, A. D. 1880, it being the 3rd Monday in March, A. D. 1880, when there was present the Hon. Andrew Ellison, judge; C. Bird Guffey, sheriff, and Peter Greggers, clerk, and on the same day the following, among other, proceedings were had in this cause, to wit:

16 THE MOLINE WAGON COMPANY, Plaintiff,
against
JACOB RUMMEL and ED. CUTLER, Defendants.

Now at this day comes the plaintiff, by *her* attorney, and files a certified copy of *her* license (under the corporate name of Moline Wagon Company) to manufacture and sell wagons and carriages at the town of Moline, Rock Island county, Illinois.

Which said license is in words and figures following, to wit:

To all to whom these presents shall come:

Know ye that James First, Morris Rosenfield, and Charles A. Benser, of the county of Rock Island and State of Illinois, having filed in my office a certificate, duly acknowledged, of their organization into a joint stock corporation under the name of "Moline Wagon Company," and having also filed a duplicate thereof in the office of the secretary of state, under and by virtue of an act of the General Assembly of said State entitled An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purpose, approved February 18, 1857, for the purpose of manufacturing and selling wagons and carriages at the town of Moline for the term of fifty years, now, therefore, I, Samuel P. Hodges, clerk of the circuit court within and for the county of Rock Island, in the State aforesaid, by virtue of the authority in me vested by said act, do hereby license the above-named corporators and their successors and assigns, under [the] corporate name of Moline Wagon
Company, to manufacture and sell wagons and carriages at
17 town of Moline aforesaid for and during the term of fifty years from the date hereof, and declare them to be entitled to all the benefits and privileges and subject to all the restrictions in the act aforesaid contained.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Rock Island, this first day of February, A. D. 1872.

[SEAL.] S. P. HODGES, *Clerk.*

STATE OF ILLINOIS, }
Rock Island County, } *ss:*

I, Levi F. Harson, clerk of the circuit court in and for the county of Rock Island and State of Illinois, hereby certify that the foregoing is a full, true, and correct copy of the license of the Moline Wagon Company, and that the said Moline Wagon Company was on the eighth day of January, A. D. 1880, and now is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court of the county of Rock Island and State of Illinois this twelfth day of March, A. D. 1880.

[SEAL.] LEVI F. HARSON, *Clerk.*

And on the same day, to wit, the 15th day of March, 1880, the following other proceedings were had in said cause, to wit:

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
18 JACOB RUMMEL and ED. R. CUTLER, Partners under the Firm Name of J. RUMMEL & SONS, Defendants.

Now at this day comes the plaintiff, by *her* attorneys, and files *her* application for the removal of this cause to the circuit court of the United States for the western division of the western district of Missouri.

Which said petition is in words and figures following, to wit:

Attachment.

STATE OF MISSOURI, } ss:
County of Putnam, }

In the Circuit Court of said County, of the March Term, A. D. 1880.

MOLINE WAGON COMPANY *vs.* J. RUMMEL & SON.

To the Hon. Andrew Ellison, judge of said court:

Your petitioner, The Moline Wagon Company, respectfully represents and shows to the court that it is plaintiff in a suit of civil nature at law now pending in a State court, to wit, the circuit court of the county of Putnam and State of Missouri, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred ($500) dollars; that your petitioner is a corporation duly organized and existing under the laws of the State of Illinois, and that it was at the time of the commencement of said suit
19 and now is a citizen of the State of Illinois; that Jacob Rummel and Edwin R. Cutler are all of the defendants in said suit, and were at the time of the commencement of said suit and now are each citizens of the State of Missouri, and that in said suit there is a controversy between citizens of different States.

Your petitioner further represents and shows that the present term of this court is the term at which said cause could be first tried, and that no trial thereof has been had, and that petitioner is entitled to remove said cause from this court to the circuit court of the United States for the western division of the western district of Missouri, and that your petitioner, in compliance with the statutes in such cases made and provided, makes and files herewith a bond with good and sufficient surety for its entering in said circuit court on the first day of its next session a copy of the record of this suit, and for its payment of all costs that may be awarded by said circuit court of the United States if said court shall hold that this suit was wrongfully or improperly removed thereto, and also for its appearing and entering special bail in this suit, if special bail is originally requisite herein.

The premises considered, your petitioner prays this honorable court to accept the petition and bond of your petitioner and proceed no further in this suit, and that this suit be removed unto the said circuit court of the United States for the western division of the western district of Missouri.

MOLINE WAGON COMPANY,
By FRED HYDE,
H. D. MARSHALL, AND
JAMES J. PARKS, *Its Attorneys.*

20 And on the same day, to wit, the 15th day of March, 1880, the following other proceedings were had in said cause, to wit:

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. CUTLER, Partners of the Firm Name of J. Rummel & Son, Defendants.

Now, at this day, comes the plaintiff, by *her* attorney, and files *her* affidavit for the removal of this cause from this court to the circuit court of the United States for the western division of the western district of Missouri.

Which affidavit is in words and figures following, to wit:

Attachment.

STATE OF MISSOURI, } *ss:*
County of Putnam, }

In the Circuit Court of said County, of the March Term, A. D. 1880.

THE MOLINE WAGON COMPANY, Plaintiff, *vs.* J. RUMMEL & SON.

Morris Rosenfield, being first duly sworn, deposes and says that he is the president of the Moline Wagon Company, plaintiff in the above-entitled cause, now pending in a State court, to wit, the circuit court of the county of Putnam and State of Missouri; that he has reason to believe and does believe that from prejudice and
21 local influences he will not be able to obtain justice in such State court, to wit, the circuit court of the county of Putnam and State of Missouri.

MORRIS ROSENFIELD.

STATE OF MISSOURI, } *ss:*
County of Putnam, }

Subscribed and sworn to by the said Morris Rosenfield before me, Peter Greggers, clerk of the circuit court of the county of Putnam and State of Missouri, this 15th day of March, A. D. 1880.

In witness whereof I have hereunto set my hand and affixed the seal of the said circuit court of Putnam county the day and year last aforesaid.

[SEAL.] PETER GREGGERS, *Clerk.*

And on the same day, to wit, the 15th day of March, 1880, the following other proceedings were had in said cause, to wit:

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. CUTLER, Partners in the Firm Name of J. Rummel & Son, Defendant-.

Now at this day comes the plaintiff, by *her* attorney, and files *her* bond for the removal of this cause to the circuit court of the United States for the western division of the western district of Missouri.

Which bond is in words and figures following, to wit:

Know all men by these presents that the Moline Wagon Company,

a corporation organized and existing under the laws of the
22 State of Illinois, as principal, and Geo. Roth, of the county of Putnam and State of Missouri, are held and firmly bound unto Jacob Rummel and Edwin R. Cutler in the penal sum of five hundred dollars, lawful money of the United States, to be paid unto the said Jacob Rummel and Edwin R. Cutler, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, the Moline Wagon Company binds itself, its successors and assigns, and the said George Roth binds himself, his heirs, executors, and administrators, and every of them, firmly by these presents.

In witness whereof the said Moline Wagon Company has caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto attached; and the said Geo. Roth has hereunto set his hand and seal the fifteenth day of March, A. D. 1880.

The condition of the above obligation is such that, whereas the above-bounden Moline Wagon Company is about to file its petition in the circuit court of Putnam — and State of Missouri for the removal of a certain cause now pending in said circuit court of Putnam county, wherein the said Moline Wagon [Company] is plaintiff and the said Jacob Rummel and Edwin R. Cutler are defendants, for the removal of said cause from said circuit court of the county of Putnam & State of Missouri to the said circuit court of the United States for the western division of the western district of Missouri, now, therefore, if the said Moline Wagon Company shall enter in such circuit court of the United States for the western division of the western district of Missouri, on the first day of the next session, a copy of the record in such suit, and shall pay all costs that may be awarded by the said circuit court of the United States, *in* [and] said circuit court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit, if spe-
23 cial bail was originally requisite therein, then this obligation to be void; otherwise to remain in full force, virtue, and effect.

[SEAL.] MOLINE WAGON COMPANY.
MORRIS ROSENFIELD, *President.*
CHARLES A. BENSER, *Secretary.*
GEO. ROTH. [SEAL.]

STATE OF MISSOURI, } ss:
County of Putnam, }

George Roth, being first duly sworn, deposes and says that he is the identical George Roth whose name is signed as surety to the foregoing bond, and that he signed the same, and that he is worth the sum of five thousand dollars over and above all liabilities and exemptions.

GEO. ROTH.

STATE OF MISSOURI, } ss:
County of Putnam, }

Subscribed and sworn to by the said Geo. Roth, before me, Peter Greggers, clerk of the circuit court in and for the county of Putnam and State of Missouri, this 15th day of March, A. D. 1880, and I hereby certify that the surety on the foregoing bond is good and sufficient for the amount therein named. In witness whereof I have hereunto set my hand and affixed the seal of the circuit court of the county of Putnam and State of Missouri the day and year last aforesaid.

[SEAL.] PETER GREGGERS, *Clerk.*

And on the same day, to wit, the 15th day of March, 1880, the following other proceedings were had in said cause, to wit:

24 *Attachment.*

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL & ED. CUTLER, Partners in the Firm Name of J. RUMMEL & SON, Defendant.

Now, on this day the application of the plaintiff for the removal of this cause to the circuit court of the United States for the western division of the western district of Missouri coming on to be heard, and both parties appearing by their respective attorneys, and the petition, affidavit, and bond filed by plaintiff being seen and heard, the same are deemed sufficient and in due form. It is therefore considered by the court that the plaintiff's application for the removal of said cause be, and the same is hereby, granted, and it is ordered that the clerk of this court make out and duly certify a transcript of the record and proceedings in this cause to be filed in the office of the clerk of the said circuit court of the United States for the western division of the western district of Missouri, as required by law, and will attach to such transcript the notes, account, and any exhibit filed in said cause, making out and retaining on file copies of such papers.

STATE OF MISSOURI, } ss:
County of Putnam, }

I, Peter Greggers, clerk of the circuit court within and for the county and State aforesaid, certify the above and foregoing is a full, true, and complete transcript of the records and proceedings in the cause of "The Moline Wagon Company against Jacob Rummel and Ed. R. Cutler," attachment, as fully as the same appears of record and on file in my said office, and attached to this transcript are
25 the original notes, account, and inventory of the goods of J. Rummel & Son, of which copies have been retained in my office.

Witness my hand as clerk, with the seal of said circuit — affixed, at office in Unionville, Putnam county, Missouri, this 24th day of March, 1880.

[SEAL.] PETER GREGGERS, *Clerk.*

P. O., Unionville, State Mo.

MOLINE, ILLS., *July* 12*th*, 1879.

January first after date we promise to pay to the order of Moline Wagon Company fifteen hundred & eighty-four & $\frac{50}{100}$ dollars, with exchange or express charges, payable at Unionville, Mo., with ten per cent. interest per annum after maturity. Value received. No. 34004.

J. RUMMEL & SON.

No. 7742. Due January 1st, '80.

P. O., Unionville, State Mo.

$1,743.50. MOLINE, ILLS., *M'ch* 15*th*, 1879.

January first, 1880, after date we promise to pay to the order of Moline Wagon Company seventeen hundred and forty-three & $\frac{50}{100}$ dollars, with exchange or express charges, payable at Unionville, Mo., with ten per cent. interest per annum after maturity. Value received. No. 34005.

J. RUMMEL & SON.

No. 7437. Due January 1–4, '80.

26 P. O., Unionville, State Mo.

$1,650.00. MOLINE, ILLS., *Nov.* 15, 1879.

Four months after date we promise to pay to the order of Moline Wagon Company sixteen hundred and fifty dollars, payable at Unionville, Mo. (Marshall's Bank), with ten per cent. interest per annum after maturity. Value received.

J. RUMMEL & SON.

No. 8145. Due March 15, '80.

P. O., Unionville, State Mo.

$1,692.11. MOLINE, ILLS., *Oct* 16*th*, 1879.

Four months after date we promise to pay to the order of Moline Wagon Company sixteen hundred and ninety-two and $\frac{11}{100}$ dollars, with exchange or express charges, payable at Unionville, Mo., with ten per cent. interest per annum after maturity. Value received.

J. RUMMEL & SON.

No. 8098. Due Feb. 16–19, '79.

MOLINE, ILL., *Jan'y* 5, 1880.

J. Rummel & Son, Unionville, Mo., to Moline Wagon Company, Dr.

Dec. 19, 1879. 1 wagon, $2\frac{3}{4}$ x 8, com..... $52 50

Invoice of J. Rummel & Son's Dry-Goods Store.

UNIONVILLE, Mo., *Jan. 16th*, 1880.

27 Invoice Ac. of J. Rummel & Son, Unionville, Mo.

9	p'r	women's shoes, @	70	6 30	
11	"	" "	75	8 25	
6	"	"	job lot, 50	3	
19	"	"	75	14 25	
12	"	"	85	10 20	
14	"	"	1.25	17 50	
2	"	"		1 70	
6	"	"	75	4 50	
9	"	"	75	6 75	
14	"	"	90	12 60	
7	"	"	75	5 75	
4	"	"	1.00	4	
5	"	"	47½	2 37	
3	"	misses'	80	2 40	
15	"	"	75	11 25	
13	"	"	80	10 40	
15	"	"	65	9 75	
7	"	"	60	4 20	
5	"	"	90	4 50	
8	"	"	65	5 20	
6	"	"	85	5 10	
6	"	"	50	3 00	
16	"	"	55	8 80	
2	"	rubbers	40	80	
11	"	misses'	50	5 50	
1	"	arctics		1 40	
14	"	women's	1.10	15 40	
10	"	"	1.20	12	
3	"	misses'	47	1 41	
9	"	women's	90	8 10	
7	"	misses'	75	5 25	
10	"	women's	90	9 00	
13	"	"	90	11 70	
11	"	"	90	9 90	
2	"	"	90	1 80	
					243 53
28			Am't for'd	243 53	
	9	p'r	women's shoes, 1.00	9 00	
14	p'r	women's shoes,	1	14	
12	"	" "	1.25	15	
9	"	" "	90	8 10	
3	"	" "	2	6	
1	"	" "	90	1	
4	"	" "		3 60	
9	"	" "	90	8 10	
5	"	" "	1.50	7 50	

10	"	"	" 90	9	
5	"	"	" 90	4	50
11	"	"	" 90	9	00
4	"	misses'	1	4	
8	"	women's	85	6	80
9	"	misses'	75	6	75
1	"	women's			85
12	"	"	1	12	
16	"	"	75	12	
4	"	"	1.25	5	
2	"	"	1	2	
1	"	"		1	90
1	"	"		1	25
1	"	plow-shoes			90
7	"	misses'	1.50	10	50
14	"	"	1	14	
10	"	children's	85	8	50
10	"	"	25	2	50
7	"	"	80	5	60
1	"	"			25
8	"	"	80	6	40
10	"	"	1	10	
10	"	"	65	6	50
12	"	"	37½	4	50
5	"	misses' slippers,	90	4	50
					465 93
29		Am't for'd		465	93
		1 p'r cloth shoes		1	
5	p'r	button "	1.40	7	
3	"	" "	20	6	
3	"	women's slippers,	1.00	3	
11	"	" "	33	3	65
7	"	cloth shoes,	75	5	25
7	"	misses' slippers,	75	5	25
13	"	leather,	75	9	75
1	"	cloth			20
5	"	women's shoes,	60	3	
4	"	" "	1.75	7	
4	"	misses' "	1	4	
10	"	women's "	1.50	15	
3	"	" "	1.35	4	05
8	"	" "	1.50	12	
6	"	" "	1.40	8	40
7	"	" "	1.75	12	25
4	"	" "	1.90	7	60
8	"	" "	1.25	10	
9	"	" "	1.85	16	65
6	"	" "	2.00	12	
6	"	" "	1.35	8	10
7	"	" "	1.50	10	50
8	"	" "	1.25	10	

12	" " "	75	9	
54	" misses',	65	35 10	
4	" "	85	3 40	
68	" "	85	57 80	
20	" "	60	12	
10	" women's	1.75	17 50	
6	" "	1.25	7 50	
5	" "	2	10	
8	" misses' boots,	3.20	25 60	
7	" men's "	2.25	15 75	
				841 21
30		Am't for'd	841 21	
	36 p'r men's boots,	2.00	72 00	
12	p'r men's boots,	2.00	24 00	
12		1.75	21 00	
12		2.00	24 00	
24		2.00	48 00	
12		2.33	27 96	
12		1.75	21 00	
36		2.00	72 00	
12		2.00	24 00	
12		2.20	26 40	
12		2.00	24 00	
12		"	24 00	
2		1.35	2 70	
3		3.15	9 45	
1			3 15	
1			2 20	
2		1.33	2 66	
1			2 00	
4		1.35	5 40	
1			2 95	
2		2.15	4 30	
1			2 25	
2		3.00	6 00	
1			1 35	
6		2.00	12 00	
5		1.95	14 75	
6		2.95	17 70	
5		2.00	10 00	
2		2.00	4 00	
2		2.35	4 70	
1			3 00	
1		1	1 75	
1	boys'		2 50	
3		1.75	5 25	
1			2 15	
				1,371 78

31	Am't for'd	1,371	78
	1 p'r boys' boots	1	35
1	p'r boys' boots	2	50
6	1.75	10	50
11	1.75	19	25
1		2	00
1		1	80
3	2.00	6	00
1		1	75
1		1	65
5	1.50	7	50
2	1.25	3	50
4	1.75	7	00
16	1.25	20	00
4	1.75	7	00
9	men's boots, 2.25	20	25
1		3	35
6	3.00	18	00
6	2.75	16	50
5	2.25	11	25
2	2.10	5	00
1,774	yds. p'ts, 5½	97	57
812	6¼	50	75
381	4	15	24
66	8⅓	5	50
137	7	9	59
102	9	9	18
4	caps, 75	3	00
10	20	2	00
9	20	1	80
5	37	1	85
2	65	1	30
1			37
2	35		70
			1,739 26
32	Am't for'd	1,739	26
	5 caps, 16		80
1	cap		25
3	hats	1	00
2	65	1	30
8	75	6	00
1			50
8	1.50	12	00
1		1	50
6	75	4	50
5	37	1	85
2	40		80
2	25		50
1		2	75
1		1	50
1		1	25

4		2 00	
2		2 50	
4	1.35	5 40	
4	1.12½	4 50	
1		75	
12	37½	4 50	
9	75	6 75	
1		1 00	
1		1 50	
10	75	7 50	
10 clocks,	1.75	17 50	
1 alarm clock		7 75	
2	2.00	4 00	
2	6.00	12 00	
2	3.00	6 00	
2	1.25	2 50	
2	2.00	2 50	
22 slates,	8	1 76	
13	12½	1 62	
			1,869 79
33	Am't for'd	1,869 79	
	7 glass pitchers, 43	3 01	
43 preserve dishes,	8⅓	3 58	
15	35	5 25	
2 pitchers,	35	70	
4	18	72	
17 goblets,	12½	2 12	
49	8⅓	4 08	
13 pickle dishes,	8⅓	1 08	
3 dishes,	8⅓	25	
20 sets, with covers,	40	8	
7	50	3 50	
13 castor bottles,	5	65	
2 preserve dishes,	35	70	
10 sets,	50	5	
1 chamber set		5	
9 cake dishes,	55	4 95	
2	1	2	
1 chamber set		7	
2 dishes,	8½	17	
16 soup plates,	90	14 40	
1		90	
20 dishes,	25	5	
3	15	45	
7 sets plates,	40	2 80	
9 soup "	40	3 60	
13 dinner plates,	40	5 20	
19 breakfast "	35	6 45	
10 mugs,	8⅓	85	
6	1½	72	
80 bowls,	11	8 80	

5½ set- cups & saucers, 50		2 75	
12½	65	8 12	
6½	55	3 57	
7 mustache cups, 25		1 75	
			1,992 91
34	Am't for'd	1,992 91	
2 tere-nes, 75		1 50	
3 butlers, 40		1 20	
4 soaps, 30		1 20	
6 sets sauce-, 34		2 04	
22	30	6 60	
10 dishes, 18		1 80	
13 pickle dishes, 20		2 60	
10	18	1 80	
4 pitchers, 48		1 92	
5	30	1 50	
4	30	1 20	
8	20	1 60	
21	15	3 15	
3	60	1 80	
22	16	3 52	
4 chambers, 75		3 00	
4	30	1 20	
13 flat-irons, 50		6 50	
11 lamp shades, 15		1 65	
2 " reflectors, 50		1 00	
2 " shades, 40		80	
3 lanterns, 65		1 95	
8 tea cans, 8		64	
49 cake pans, 8⅓		4 08	
125 custard pans, 5		6 25	
61 wash " 8		4 88	
57 milk " 8⅓		4 75	
20 match-boxes, 2½		50	
72 tax-, 2½		1 80	
217 pieces ten-ct. counter goods, 8⅓		18 08	
372 5-ct.	2	7 44	
615 " sundries	2½	15 37	
372 10-ct. "	8½	31 00	
1 pocket knife		55	
			2,137 78
35	Am't for'd	2,137 78	
3 pocket knives, 48		1 44	
4	50	2	
2	30	60	
2	30	60	
2 raisors, 70		1 40	
5	35	1 65	
16 violin strings, 15		2 40	
1 cigar stand		45	

1	nigger dancer	1	
1		1	
2	clocks, 1.25	2	50
17	card board, 8⅓	1	41
3	bottles hair-oil, 16⅔		50
5	shawl pins		15
1	set furs	3	50
1		3	50
8	mirrors, 10		80
3	boxes machine att'ch's, 25		75
10	silver rings		50
19	25	4	75
8		2	
1			55
2			50
2	75	1	50
1			25
1		1	90
1			75
1			50
1			75
1		1	25
1		1	35
1			25
1		2	
1		1	75
			2,183 98
36	Am't for'd	2,183	98
	1 set jewelry		37
1	badge	1	
6	buttons	1	08
1	charm		10
2	sun-glasses		25
5	set buttons, 7		35
1			20
7	collar " 18	1	26
2	set- jewelry, 75	1	50
1	" ear drops		40
1	shirt stud		25
1	toilet set		65
2	p'r vaces, 1	2	
1			35
1			15
1	box trinkets		50
1	cup & saucer		25
3	pickle dishes, 25		75
2	glasses, 75	1	50
7	bitts, 8⅓		58
1	box soap		10
4	mottoes, 10		40

5 pocket-books, 25		1 25	
3	20	60	
10	8	80	
10	16	1 60	
33 back combs, 12		4 12	
3		1 35	
11 p'r bracelets		90	
9 violin strings, 18		1 62	
1 bank		75	
2 fur caps, 30		60	
9 neckties, 30		2 70	
2 " 20		40	
10 " 8½		83	
			2,215 49
37	Am't for'd	2,215 49	
4 hair brushes, 15		60	
1 work-box		75	
1 thread stand		65	
3 plumes, 16		48	
7 ostrich feathers, 25		1 75	
20 hat flowers, 10		2 00	
11 " 15		1 65	
30 " 15		4 50	
15 " 37		4 81	
7 " 8		56	
1 fur cap		75	
130 spools silk, 3		3 90	
80 " 7		5 60	
28 " 7½		2 10	
Goods in spool case		25	
1,055 spool thread, 3		31 65	
286 " 2		5 72	
6 drawers & spool case		5 00	
15 boxes thread, 36		5 40	
48 rushes, 3½		1 68	
11 " 45		4 95	
12 p'r gloves, 87		10 44	
17 " " 1.00		17 00	
18 " " 75		13 00	
2 ladies' leggin-s, 75		1 50	
1 set cuffs & collar		37	
2 ladies' h'd'k'fs, 50		1 00	
25 collars, 3		75	
7 " 12		87	
8 cuffs & collar, 37½		3 00	
7 chair tidies, 12		84	
12 thimbles, 14		1 68	
15 " 5		75	
31 " 11		3 41	
			2,354 88

38	Am't for'd	2,354	88
	1 box thimbles		50
2	box bobbins		50
1	spool wire	1	00
8	chromos, 10		80
6	spectacles, 14		84
26	35	9	10
6	"	2	10
16	hooks, 3		48
	Pens		05
12	*scanes* flo-s		12
1	baby hood		75
4	ties, 25	1	00
20	yds. chinil-e, 12½	2	50
10	8		80
3	ladies' ties, 8½		25
12	17	2	04
3	25		75
2	60	1	20
10	yds. chiniel-, 5		50
4	hair-pins, 20		80
1	doz. rushes		50
5	ties, 20	1	00
1			15
7	20	1	40
2	h'k'fs, 15		30
2	suspenders, 30		60
1	mirror		15
4	cuffs & collars, 14		56
8	corsets, 75	6	00
5	" 18		90
10	p'r steals corsets, 5		50
2	coats, rubber, 3.35	6	70
4	collars, 13		52
90	needles, 2	1	80
			2,402 09
39	Am't for'd	2,402	09
	1 coats	2	00
1	coats	4	00
1		2	00
1		5	00
1			5
1		2	50
1		3	00
1		4	00
1		5	00
1		3	50
1		3	50
1		3	50
1		3	00
1		8	00

1		3 00	
1		2 50	
1		2 50	
1		2 50	
1		5 00	
1		2 50	
1		2 00	
5	rubber	12 00	
1 coat		3 50	
1		2 00	
1		4 00	
1		2 00	
1		2 00	
1		4 00	
1		5 00	
1		4 00	
1		5 00	
1		3 00	
1		2 00	
1		4 00	
			2,528 59
40	Am't for'd	2,528 59	
	1 coates	7 00	
1 coates		5 00	
1		5	
1		6	
1		6	
1		9	
1		6	
1		6	
1		5	
2 boys' coats		2 25	
1		4	
1		3	
1		4	
1		3	
1		3	
1		3	
1		3	
1		3	
1		3	
1		4	
1		5	
1		6	
2 cloth coats, 4.50		9 00	
3	6.00	18	
2	4.50	9 00	
5	9.00	45 00	
3	9.33⅓	28 00	
1 spring overcoat		9	
2 coats, 5.00		10 00	

9 p'r- cloth pants, 3.50			31 50	
7 boys' " 1.14$\frac{3}{7}$			8 00	
1			4	
1			3 50	
1			3 50	
				2,808 34
41	Am't for'd		2,808 34	
	1 p'r pants		4 00	
1 p'r pants			3	
1			3	
1			2	
1			3 50	
1			2 50	
9	1.00		9	
3	1.00		3	
4	3.75		15	
4	3		12	
4	2		8	
4	2		8	
7	1		7	
8	1.50		12	
1			4	
2	1.50		3	
4	3		12	
3	1.30$\frac{1}{3}$		4	
4	1.75		7	
5	1.60		8	
12	1.25		15	
12 flannel shirts, 1.40			4 80	
7 " " 85$\frac{5}{7}$			6 00	
8 boys' dusters			1 25	
15 vests, 1.25			18 75	
12	1		12 00	
12			12	
13	1.29$\frac{8}{13}$		16 85	
8	1.50		12	
2	1		2	
4 boys' vests, 50			2	
5	1.20		6	
10	1.80		18	
3 p'r pants, 2.50			7 50	
				3,072 49
42	Am't for'd		3,072 49	
	3 p'r pants, 2.50		7 20	
3 p'r pants, 3			9	
5	2		10	
3	3.33$\frac{1}{3}$		10	
9	1		9	
2	2		4	
302 yds. Augusta Am., 7$\frac{1}{2}$			22 65	
53 " Lawrence L L, 7			3 71	

427	Atlantic A, 7		29	89
12	Knickerbocker, 17		2	04
15	8		1	20
15	12		1	80
35	12		4	20
33	12		3	96
47	12		5	64
4 summer hats, 25			1	
3				50
1 safe			55	
1 desk			6	
1 printing-press & outfit			10	
1 high stool				50
1 stove & pipe			10	
3 lamps & shades			5	
1 chair			2	
5 "			1	25
3 counter scales			12	00
1 platform "			15	
1 skeleton & clothes			2	
73 lb paper, 8			5	84
48 lb " 3			1	44
500 No. 1 bags				75
400 " 3 "			1	
500 " 10 "			2	35
500 " 6 "			1	75
				3,330 46
42½	Am't for'd	3,330	46	
	78 pieces lot ribbon	50		
16 hair nets, 8		1	28	
28 p'r hose, 28		7	84	
12	18	2	16	
8	16	1	28	
30	25	7	50	
21	18	3	78	
14	5		70	
10	18	1	80	
10	22	2	20	
12	5		60	
9	20	1	80	
14	5		20	
4	40	1	60	
9	8		72	
15	5		75	
4	40	1	60	
11	10	1	10	
7	7		49	
3	37	1	11	
9	22	1	98	
3	37	1	11	
8	25	2		

8 p'r gloves, 75			6	
12	1.37		16	44
8	16½		1	32
6	18		1	08
7 p'r kid gloves, 85			5	95
6	37		2	22
6	18		1	08
8	15		1	20
11	18		1	98
6	20		1	20
7	18		1	26
				3,464 29
43	Am't for'd		3,464	29
4 p'r rubber gloves, 1.25			5	00
7 p'r rubber gloves, 14				98
8	18		1	44
4	25		1	
12	33		3	96
2	7½			15
6	15			90
7	21		1	47
18 p'r suspenders, 10			1	80
6	35		2	10
13	18		2	34
12	25		3	00
10	18		1	80
4	16			64
8	18		1	28
3	25			75
6	25		1	50
11	30		3	30
7	18		1	26
7	15		1	05
3	8			24
5 suits ladies' night-wear, 2.50			12	50
1 box ball fringe				25
1½ lb zephyr			1	50
1 box embroidery			1	50
4 night-caps, 14				56
1 " hood				35
1 box ruffling			1	50
14 brushes, 14			1	96
1 basket				10
7 — shoe-polish, 8				56
47 pieces beads & paper, 3			1	41
1 box flowers				50
1 " corset laces				20
				3,523 14
44	Am't for'd		3,523	14
10 doz. buttons, 10			1	

1 lot buttons			10	
1			25	
13 doz. buttons,	15		1 95	
10 boxes brass buttons,	15		1 50	
4	15		60	
3 sets knitting pins			10	
22 gross shirt buttons,	20		4 40	
65 doz. buttons,	2		1 30	
26	12		3 25	
11	16		1 76	
8	14		1 12	
½			18	
40	10		4 00	
67	5		3 35	
180	8		14 40	
153	6		9 18	
50 lamp wicks			25	
40 yds. binding,	7½		3 00	
36	6		2 16	
14 velvet trimming,	20		2 80	
13 rubber,	6		78	
7	1		07	
10	2		20	
2 fans			20	
20 ladies' girdler,	10		2	
14 yds. cord,	5		70	
10	cord, 4		40	
36 balls "	1		36	
7	3		21	
9 doz. F. combs,	48		4 32	
3 p'r mits,	16		48	
6 p'r gloves,	18		1 08	
4 " "	20		80	
				3,591 39
45	Am't for'd		3,591 39	
	6 p'r gloves,	7½	45	
9		25	2 25	
3		65	1 95	
1 glove stretcher			15	
4 p'r wool hose,	20		80	
24		6¼	1 56	
22		8½	1 87	
6		25	1 50	
21		8⅓	1 75	
11		33	3 63	
4		12½	50	
4 fans,	5		20	
33 p'r bracelets,	5		1 60	
1 bunch wire cord			10	
1 doz. silver-plated knives			6 00	

48 p'r hose, 7			3 36	
6	18		1 08	
3	10		30	
5	8⅓		42	
13	8⅓		1 10	
6	15		90	
1			30	
2	11		22	
3	27		81	
17	6		1 12	
2	25		50	
9	25		2 25	
4	29		1 16	
12	25		3 00	
9	18		1 62	
10	29		2 90	
2	30		60	
3 rubber guards, 8			24	
1 box braid			1 00	
				3,638 58
46	Am't for'd		3,638 58	
	29 p'r hose, 21		6 09	
255 yds. lining, 9			22 95	
3 gross shoe laces, 27			81	
6 " hooks & eyes, 20			1 20	
33 " combs, 8			2 64	
1 doz. "			1 20	
1			96	
1			72	
1			96	
1			1 08	
1			1 68	
1			1 20	
40 papers pins, 6½			2 60	
2 switches, 25			50	
24 rolls braid, 8⅓			2 04	
5 bolts " 20			1 00	
18 bunches "			50	
31 rolls " 8⅓			2 58	
24 bolts " 15			3 60	
6 pieces trimming			20	
18 tassles, 10			1 80	
13 spools thread, 8			1 04	
304 yds. Canton flannel, 8			24 32	
196 " " 7			13 72	
25 " " 11			2 75	
4 p'r col. blankets, 1.50			6 00	
3½ " white " 2.25			7 87	
306 yds. Utica Mo.,	5		15 30	
310 " Lawrence L. L.,	7		21 70	
109 " Augusta A,	7½		8 17	

187	" Lewiston duck,	16	29 92	
88	" York "	15½	13 64	
95	Denines,	10	9 50	
51	Boston duck,	8	4 08	
				3,852 90
47	Am't for'd		3,852 90	
	235 yds. duck,	10	23 50	
107	yds. Lewiston duck,	16	17 12	
54	Canton flannel,	11	5 94	
450	Alabama plaids,	10	45 00	
195	Forest Hill "	10	19 50	
84	Arlington shirting,	8	6 72	
53	"	8	4 24	
24	"	8	1 92	
65	yds. shirting,	6½	4 22	
55	" Alabama plaids,	10	5 50	
50	Economy shirting,	8½	4 25	
48	lining,	25	12 00	
35	dress goods,	20	7 00	
28	flannel,	25	7 00	
28	water-proof,	50	14 00	
25	gingham,	6	1 20	
15		6	90	
13		6	78	
27		7	1 89	
22		7	1 54	
29		7	2 06	
23		6	1 38	
4		8	32	
18		5	90	
14		8	1 12	
23		7	1 61	
10		8	80	
3	alpaca,	50	1 50	
37	Italian cloth,	15	5 55	
28	lawn,	10	2 80	
16		8	1 28	
18		8	1 44	
25		8	2 00	
24	percale,	8	1 92	
				4,062 10
48	Am't for'd		4,062 10	
	25 yds. gingham,	10	2 50	
1	jacket		50	
22	yds. lining,	10	2 20	
35	" cambrick,	5	1 75	
44		5	2 20	
47		5	2 35	
30		5	1 50	
46		5	2 30	
14		5	70	

37		5	1 85	
35		5	1 75	
18		4	72	
30 yds. table linen,		75	22 50	
3		60	1 80	
14		40	5 60	
20		25	5 00	
56		35	19 60	
18		60	10 80	
24	" flannel,	22	5 28	
6	" ladies' cloth,	65	3 90	
5	" " "	35	1 85	
47	" bleached mo.,	7½	3 53	
27		7	1 89	
24		8	1 92	
35		8	2 80	
30		7	2 10	
32		7½	2 40	
49		8	3 92	
60		7	4 20	
30		7	2 10	
57		7	3 99	
47		7½	3 53	
46 cambric,		10	4 60	
				4,195 73
49		Am't for'd	4,195 73	
	27 yds. bleach mo.,	10	2 70	
2 shawls,		1.25	2 50	
1			1 25	
2		2.50	4 00	
1 jacket			75	
168 aprons,		3	5 04	
1 yd. fringe			75	
12	cord,	2	24	
12	fringe,	10	1 20	
12		50	6 00	
4		40	1 60	
7		20	1 40	
22¾	velvet,	50	11 23	
9¾		37	3 40	
2½		75	1 87	
2		50	1 00	
3½		1.00	3 50	
2½		1.00	2 50	
5		75	3 75	
1			1 00	
4½	fringe,	15	67	
11		12½	1 37	
23		5	1 15	
15		2	30	

19	bead fringe, 6		1 14	
2	" 15		30	
5¾	6		34	
Box, traps, &c.			1 00	
2 yds. fringe, 2			04	
1½ "	velvet, 50		75	
¼ "	satinet		31	
¼			25	
1			1 00	
1			1 00	
				4,261 03
50	Am't for'd	4,261 03		
	1 yd. satinet		1 00	
2½ yds.	silk, 1.50		3 75	
5¼	1.25		6 56	
2½	75		1 87	
4	87		3 48	
¾	1.35		1 02	
2	75		1 50	
5¾	80		4 60	
3	85		2 55	
26 yds.	insertion, 5		1 30	
22	embroidery, 14		3 08	
3	25		75	
¾			12	
12	20		2 40	
19	8		1 62	
4	5		20	
3	10		30	
4	3		12	
24	5		1 20	
2½	10		25	
36	3		1 08	
27	8		2 16	
36	7½		2 70	
17	5		85	
7 fascinators, 20			1 40	
3 hoods, 30			90	
7 yds.	wide lace, 35		2 45	
12	12½		1 20	
10	20		2 00	
3½	15		52	
4¾	35		1 66	
3	18		54	
14½	16		2 32	
3⅓	16		60	
				4,319 38
51	Am't for'd	4,319 38		
	8 yds. wide fringe, 16		1 28	
2⅓	" " 16		44	
1 box	envelopes		50	

1	lot paper & pass-books		8 00	
39	yds. dress goods, 25		9 75	
5¾	" water-proof, 98		5 63	
1¾	" " 75		1 30	
2	" " 75		1 50	
45	" flannel, 15		6 75	
39	" " 15		5 45	
32	" " 15		4 80	
28	" alpaca, 15		4 20	
43	" " 15		6 45	
28	" " 15		4 20	
1	" "		25	
4½	" " 35		1 57	
26	yds. chambra, 20		5 20	
5⅓	" grass cloth, 16		92	
5	" worsted, 18		90	
2½	" suiting, 10		25	
3½	" " 8⅓		30	
4½	" 8		36	
2½	worsted, 18		45	
6¼	" 18		1 12	
5	" 16⅔		1 83	
18	" 15		2 70	
3	" 15		45	
15	grass cloth, 20		3 00	
22	" 17½		3 85	
5	" 15		75	
15	worsted, 15		2 10	
22	lining, 12½		2 75	
9⅓	cashmere, 57		6 05	
22½	" 67½		15 18	
				4,419 61
52	Am't for'd	4,419 61		
	11½ yds. cashmere, 55		6 32	
15½	yds. cashmere, 55		8 52	
18	grenadine, 11		1 98	
7½	worsted, 16		1 20	
48	18		8 64	
55	15		8 25	
14½	16		2 32	
42½	16		7 80	
32½	18		6 85	
1	hood		50	
6	p'c children's underwear, 25		1 50	
40	" suiting, 18		7 20	
6½	— worsted, 15		97	
7½	15		1 12	
3	18		54	
21½	15		3 22	
56	16½		9 33	
50	16½		8 33	

32⅓	16½		5 45	
50	16		8 00	
59	16		9 44	
22	20		4 40	
48½	12½		6 06	
36½	15		5 47	
43⅓	16		7 00	
55½	15		8 32	
15	16½		2 50	
54	24		12 90	
7½	15		1 12	
56	18		9 78	
30½	20		6 10	
23	10		2 30	
18	20		3 60	
40½	15		6 07	
				4,602 71
53	Am't for'd		4,602 71	
	45 yds. worsted,	16½	7 50	
24 yds. worsted,	18		4 32	
9	20		1 80	
3	15		45	
33½	20		6 20	
45	12½		5 65	
41	10		4 10	
9	12½		1 12	
19 coat lining,	10		1 90	
18 yds. lace,	16		2 88	
10	3		30	
22	8		1 76	
28	5		1 40	
18	3		54	
6	3		18	
8	2½		20	
1	1		12	
2	6		12	
12	3		36	
15	3		45	
8	2		16	
9	2		18	
28	3		84	
5	4		20	
18	3		54	
4	5		20	
18	embroidery,	10	1 80	
28	8		2 24	
18	3		54	
7	9		63	
10	8		80	
8	3		24	

24	lace, 3		72	
28	3		84	
				4,654 49
54	Am't for'd	4,654 49		
	57 yds. embroidery, 8		4 56	
25	yds. embroidery, 9		2 25	
20	15		3 00	
31	8		2 48	
20	4		1 20	
6	5		30	
9	h'dk'fs, 3		27	
12	7½		90	
62	3		1 86	
46	2½		1 15	
6	5		30	
2	6		12	
6	10		60	
12			20	
18	6		1 08	
12	5		60	
17	4½		76	
180	2½		4 50	
8	shirt fronts, 15		1 20	
10	14		1 40	
6	10		60	
24	napkins, 5		1 20	
6	5		30	
18	5		90	
1	towel		25	
2	yds. vailing, 25		50	
6	25		1 50	
4	40		1 60	
6	25		1 50	
12	35		4 20	
9	30		2 70	
1			30	
13	35		4 55	
16	37		5 92	
				4,709 24
55	Am't for'd	4,709 24		
	3 yds. vailing, 30		90	
3	yds. linen, 25		75	
15	55		8 25	
26	lace, 5		1 30	
64	boxes collars, 5		3 20	
2	fur caps, 1		2 00	
30	ladies' hats, 50		15 00	
2	boxes jewelry, 1		2 00	
1	clock		1 25	
6	white vests, 1		6 00	

25 paper mats, 3	75	
25 10	2 50	
12 ladies' summer suits, 50	6 00	
2 2.50	5 00	
1 box lamp-flues, 10	10	
40 yds. carpet paper, 5	2 00	
28 bu. beans, 1.00	28 00	
50 yds. carpet paper, 5	2 50	
6 chairs, 25	1 50	
1 tub	50	
1 lounge	1 00	
1 bedstead	3 00	
1 beaureau	6 00	
1 safe	4 00	
1 stove & fixtures	18 00	
6 sewing-machines, 5	30 00	
4 doz. brooms, 2.00	8 00	
2 tobacco cutters, 1.50	3 00	
4 doz. straw hats, 60	2 40	
1 lounge	5 00	
2 stools, iron, 50	1 00	
1 grindstone	1 25	
1 billiard table, 10.00	10 00	
1 feed-cutter	5 00	
		4,896 39
56 Am't for'd	4,896 39	
60 lb sinica snakeroot, 20	12	
2 tac-les & rope	2 50	
1 rolling cutter	2 50	
6 grain sacks, 20	1 20	
1 bu. hickory nuts	50	
1 hand saw	50	
8 water pails, 12½	1 00	
5 chromos, 1	5	
2 mirrors, 2	4	
1 "	50	
2 statuary, 1	2	
14 lamps, 30	4 20	
5 coffee-mills, 73	3 65	
1 "	25	
16 yds. crash, 10	1 60	
20 " " 5½	1 10	
10 " " 8	80	
6 " " 7	42	
10 " " 8⅓	83	
6 undershirts, 35	2 10	
13 pr. drawers, 50	6 50	
12 shirts, 37½	4 50	
1 shawl	25	
2 stand covers, 75	1 50	
4 skirts, 75	3	

28 yds. flannel, 25	7		
22 " " 18	3 96		
47 " " 27	12 69		
32 " " 22	7 04		
22 " " 47	10 34		
10 " " 25	2 50		
647 " muslin, 3½	22 64		
43 pr. overalls, 42½	18 27		
35 yds. linc-y, 15	5 25		
			5,048 48
57 Am't forw'd		5,048 48	
27 yds. flannel, 20		5 40	
40 yds. flannel, 18		7 20	
15 " " 25		3 75	
10 " " 25		2 50	
3 " linc-y, 12½		37	
2 " flannel, 35		70	
3 " " 25		75	
7 " opera flannel, 30		2 10	
8 " " 12		96	
11 " " 27½		3 02	
26 " linc-y, 15		3 90	
6 " flannel, 20		1 20	
20 " bed-tick, 10		2 00	
53 " " 12½		6 62	
10 " " 9		90	
24 " grenadine, 20		4 80	
6 " percale, 6		36	
40 " " 6		2 40	
38 " " 7		2 66	
4 " " 8		32	
2 " " 5		10	
26 " " 8		2 08	
18 lawn, 15		2 70	
8 swiss, 15		1 20	
1 tablecloth, 75		75	
3 towels		20	
12 pr. drawers, 25		3 00	
6 yds. cloaking, 30		1 80	
2 bed spreads, 37½		75	
6 yds. mersa-l-es, 25		1 50	
10 " lace curtains, 25		2 56	
3 water-proof circulars, 2.25		6 75	
2 " coats, 3.50		7 00	
7 head shawls, 25		1 75	
			5,132 47
58 Am't for'd		5,132 47	
2 stand covers, 75		1 50	
12 umbrellas, 75		9	
12 rolls paper blinds		1 25	
40 yds. Holland, 12½		5	

20	"	burlap, 6	1 20	
30	"	oilcloth, 25	7 50	
19		white shirts, 75	14 25	
6		unlaundried, 75	4 50	
6		undershirts, 45	2 70	
11		p'r drawers, 30	3 30	
3	"	ladies' picnic drawers, 75	2 25	
6	"	" " " 50	3	
12		undershirts, 25	3	
11		p'r drawers, 50	5 50	
12		shirts, 50	6	
16	yds.	cashmere, 65	10 40	
47	"	jemes, 10	4 70	
4	"	cotton goods, 15	60	
7	"	" 20	1 40	
7	"	cashmere, 35	2 45	
2	"	cloth, 10	20	
13	"	" 15	1 95	
4	"	" 28	1 12	
34	"	jemes, 10	3 40	
18	"	" 20	3 60	
16	"	cashmere, 75	12	
18	"	jemes, 18	3 24	
3	"	cotton goods, 15	45	
25	"	jemes, 10	2 50	
4	"	" 25	1	
4	"	cloth, 70	2 80	
2	"	" 1.00	2 00	
4	"	janes, 22	88	
13	"	" 37½	4 87	
				5,261 98
59		Am't for'd	5,261 98	
		46 yds. janes, 40	19 60	
22	yds.	janes, 25	5 50	
35	"	" 18	6 30	
18	"	" 18	3 24	
22	"	" 40	8 80	
16	"	" 12	1 68	
15	"	" 20	3	
8	"	" 2	1 60	
14	"	cashmere, 75	10 50	
6	"	tweed, 35	2 10	
11	"	cashmere, 70	7 70	
8	"	" 75	6	
25	"	worsted, 1	25	
27	"	satinet, 25	5	
28	"	" 25	7	
12	"	janes, 20	2 40	
15	"	cashmere, 75	11 25	
13	"	janes, 16	2 08	
7	"	cashmere, 75	5 25	

10 "	worsted, 75	7 50	
14 "	tweed, 35	5 20	
15 "	lining, 8	1 20	
2 "	janes, 20	40	
12 "	tweed, 60	7 20	
8 "	" 75	6	
13 "	sheeting, 10	1 30	
24 "	" 30	7 20	
84 lb	tobacco, 4 caddies, 55	46 20	
48 lb	" " 55	26 40	
96 lb	" " 53	50 88	
59 lb	" 5 caddies, broken, 55	32 45	
3 doz.	flavoring ext., small, 1.15	3 45	
½ "	" large, 2	1	
⅜ "	" small, 1.25	83	
			5,593 19
60	Am't for'd	5,593 19	
	1⅓ cans corn, 1.75	2 33	
108 bars	Town Talk soap, 4	4 32	
11	Utica, 4	44	
38	Grahams, 4	1 52	
108 lb	starch, 6	6 48	
6 lb	baking powder, 35	2 10	
3 lb	" " 35	1 05	
4 lb	" " 35	1 40	
4 lb	" " 10	1 40	
2 5-lb	cans peaches, 15	30	
27 2-lb	" 14	3 91	
19 2-lb	huckleberries, 12½	2 37	
26 cans	lye, 10	2 60	
8 "	blackberries, 8	64	
13 "	raspberries, 7	91	
3 "	harness oil, 30	90	
6 "	pumpkin flower, 15	90	
6 doz.	O. S. tobacco, ¼ lb, 27½	1 65	
34 papers	tacks, 2½	85	
4	salt boxes, 4	16	
3	set-spoons, 10	30	
5 "	" 55	2 75	
1 "	knives & forks	60	
5 "	spoons	1 00	
6 "	" 70	4 20	
1 "	knives & forks	50	
2 "	spoons, 1.37½	2 75	
½	"	30	
1 "	knives & forks	1	
1½ set	" "	1 50	
2 "	sheavers, 12	25	
3 "	" 23	69	
11	lamp burners	1 25	
8 cans	plums, 15	80	
			5,647 31

61	Am't for'd	5,647 31	
	42 boxes blacking, 2	84	
	1 butter stamp	10	
	26 boxes snow flake, 8⅓	2 16	
	18 lb candy, 12½	2 25	
	18 doz. boxes matches, 10	1 80	
	50 lb carpet warp, 20	10	
	10 bars stove polish	10	
	1 sugar box	20	
	24 cans raspberries, 10	2 40	
	2 spring balances	15	
	40 lb starch, 6	5 40	
	24 6-lb cans peaches, 20	4 80	
	25 " blackberries, 12½	3 12	
	40 lb starch, 6	2 40	
	36 6-lb cans peaches, 20	7 20	
	47 lb tea, 30	14 10	
	44 " " 22	9 78	
	29 " " 20	5 80	
	45 1-gal. crocks, 5	2 25	
	10 1 " jars, 5	50	
	4 ½ " " 3	12	
	200 lamp flues, 3½	7	
	6 doz. flower pots	1	
	4 stone pitchers & 2 jars	25	
	8 butter firkins, 12½	8	
	40 lb cotton bat	5	
	1½ doz. washboards, 2.00	3	
	16 buckets	3	
	1 oil tank	3	
	3 " cans, 1 gal. each	1	
	3 spools rope, 25 lb, 11	2 75	
	2 tubs	1	
	7 bu. beans, 1	7	
	3 silver	25	
			5,765 03
62	Am't for'd	5,765 03	
	48 lb binding cheese, 10	4 80	
	118 lb dried apples, 8	9 44	
	256 lb standard A sugar, 11	28 16	
	78 lb brown " 9	7 41	
	60 lb Orleans " 8	4 80	
	6 lb dried beef, 10	60	
	20 lb California peaches, 15	3	
	25 lb rice, 8	2	
	25 lb dried apples, 7	1 75	
	50 lb coffee, 16⅔	8 33	
	soda	25	
	100 lb coffee	15 50	
	140 lb coffee, 14	19 60	

4 lb tea, 38		1 52	
8 lb " 28		2 24	
8 lb " 50		4	
20 lb " siftings, 20		4	
5 lb " " 55		2 75	
6½ lb all-spice, 22		1 43	
10 lb pepper, 14		1 40	
4 lb mustard, 20		80	
1 lb cream tartar		20	
8 lb ginger, 25		2	
70 dried corn, 8		5 60	
3 pepper, 20		60	
514 coffee, 14½		74 53	
248 brown sugar, 8¾		21 70	
324 " " 8⅔		28 08	
12 blacking brushes		2	
8 hair "		82	
11 scrub "		1 25	
4 caddies fish, 93		3 72	
13 curry combs, 8		1 04	
6 doz. 2 lb cans oysters, 1.20		7 20	
			6,037 55
63 Am't for'd	6,037 55		
19 lb bacon, 10		1 90	
12 lb wax, 20		2 40	
1 counter scales		2	
120 lb tallow, 5		6	
10 lb sacks buckwheat, 65		6 50	
44 50 lb sacks flour, 1.70		74 80	
16 " " " 1.70		27 20	
23 " " " 1.10		25 30	
34 " " " 1.50		51	
81 " " " 1.35		109 35	
39 " " " 1.50		58 50	
23 " " " 1.35		31 05	
1 stove & pipe		2	
1 b'l vinegar		3	
5 bu. onions, 50		2 50	
Lot of pumps & tubing		20	
" barrels, boxes, & jars		10	
650 bu. potatoes, 30		195	
1 sack peas		1 50	
2 show-cases		20	
Agricultural imp.		40	
60 bu. coal, 10		6	
Total	6,733 55		

64 And afterwards in vacation of said court, and on the 8th day of May, A. D. 1880, the following entry appears of record, to wit:

THE MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

This day come Huiskamp Brothers, by C. L. Dobson, Esq., their attorney, and file interplea herein.

Said interplea is in words and figures as follows, to wit:

Interplea of Huiskamp Brothers.

In the United States Circuit Court, West Division of the Western District of Missouri. May Term, 1880.

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. R. CUTLER, Defendants.

Now at this day comes H. C. Huiskamp, H. J. Huiskamp, and Luke Huiskamp by their firm name of Huiskamp Brothers, and state to the court that they are the owners of the goods and chattels attached by the sheriff of Putnam county, Missouri, by virtue of the writ of attachment issued in the above-entitled cause, as shown by said sheriff's return; that all of said goods and personal property are and were at the date of the levy of the said writ of attachment the property of these interpleaders in their firm name of Huiskamp Brothers, under which firm name they are trading and doing business in the city of Keokuk, Iowa; and said interpleaders
65 claim said property as their own and demand a return of the same.

TANNEHILL & FEE, WITH
C. L. DOBSON,
Att'ys for Interpleaders.

STATE OF IOWA, *Lee County:*

Luke Huiskamp, one of the interpleaders above named, being duly sworn, upon his oath says the matters and things stated in the above and foregoing interplea are true as therein set forth.

LUKE HUISKAMP.

Subscribed and sworn to before me, the undersigned notary public within and for said county and State, this 4th day of May, 1880.

In testimony whereof I hereto set my hand and notarial seal at my office in Keokuk, in said county, the day and year aforesaid.

[SEAL.] NANNIE M. SMITH,
Notary Public.

And afterwards, to wit, at the regular May term of said court, 1880, and on the 17th day of May, A. D. 1880, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

This day comes defendant, J. Rummel, by his attorneys, Dob-

son and Barnett, and files separate plea in abatement; also comes Sarah A. Cassaday, by said attorneys, and files amended inter-
66 plea by leave of court; also come Huiskamp Brothers, by said attorneys, and files motion for leave to withdraw and refile their interplea, and said motion being submitted, and the premises considered, it is ordered that the same be sustained; and said interplea having been withdrawn, it is ordered that the clerk refile the same, which is accordingly done.

Said plea in abatement of J. Rummel is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division *for* the Western District of Missouri. May Term, 1880.

THE MOLINE WAGON COMPANY, Plaintiff,
against
JACOB RUMMEL & E. R. CUTLER, Defendants.

Comes now Jacob Rummel, one of the above-named defendants, and files this his separate plea in the nature of a plea in abatement, and for his said plea states that he is one of the defendants in this cause, and that he denies that plaintiffs have a just demand against this defendant.

This defendant denies that he has fraudulently conveyed or assigned his property or effects so as to hinder or delay his creditors.

This defendant denies that he has fraudulently concealed, removed, or disposed of his property or effects so as to hinder or delay his creditors.

This defendant denies that he is about fraudulently to con-
67 vey or assign his property or effects so as to hinder or delay his creditors.

Therefore this defendant prays that the attachment in this cause abate and the property heretofore attached be released, and for all proper relief.

JACOB RUMMEL.

Jacob Rummel, one of the defendants herein, makes oath and says that the statements and facts of the foregoing plea in abatement are true according to his best knowledge and belief.

JACOB RUMMEL.

Subscribed and sworn to before me. Witness my hand and notarial seal this 19th day of April, 1880. My commission expires on the 17th day of April, 1881.

[SEAL.]

A. D. CHRISTY,
Notary Public.

Said motion of Huiskamp Brothers for leave to withdraw and refile their interplea is in words and figures as follows, to wit:

United States Circuit Court, West. Div. West. Dist. of Mo.

MOLINE WAGON COMPANY, Pl'ff,
vs.
J. RUMMEL *et al.*, Def'ts.

Huiskamp Bros., Interpleaders.

Now, at this day, come the said Huiskamp Brothers, interpleaders in the above-entitled cause, and ask the court to permit them to withdraw the interplea filed by them in vacation of this court on the — day of May, 1880, and for leave to refile the said interplea to-day.

C. L. DOBSON,
Of Counsel for said Huiskamp Bros., Interpleaders.

68 And afterwards, at the said regular May term, 1880, of said court and on the 18th day of May, A. D. 1880, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

This day comes the plaintiff, by its attorneys, Messrs. Gage & Ladd, and files answer to interplea of Huiskamp Brothers.

Said answer is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE MOLINE WAGON COMPANY, Plaintiff,
vs.
JACOB RUMMEL and ED. R. CUTLER, Defendants, and H. C. HUISKAMP, H. J. HUISKAMP, and LUKE HUISKAMP, Interpleaders.

Now comes the Moline Wagon Company, plaintiff in the above-entitled cause, and, for answer to the interplea of the said interpleaders filed herein, denies each and every allegation in said interplea contained, and prays judgment and for its costs.

JAS J. PARKS AND
GAGE & LADD,
Att'ys for Plaintiff.

69 And afterwards, at an adjourned day of the regular May term, 1880, of said court and on the 21st day of June, A. D. 1880, the following entry appears of record, to wit:

THE MOLINE WAGON CO.
against
JACOB RUMMEL & ED. R. CUTLER.

Now at this day come the parties, by their attorneys, and plaintiff files its petition praying for an order of sale of the property attached in this cause, and, the same being heard and considered by the court, and it appearing to the court that the personal property actually seized by the sheriff of Putnam county, Missouri, and now in his possession under the writ of attachment herein, is likely to depreciate

in value before the probable termination of this suit and that the keeping of the same will be attended with much expense, it is ordered by the court that the said sheriff of Putnam county proceed to sell said property and to give notice of and conduct such sale in like manner as sales of goods under execution, and that he make his return of his proceedings under this order on or before the 1st day of August, A. D. 1880, showing how he has executed the same, and that he return therewith to the clerk of this court an itemized statement of all his charges and expenses connected with said property from the issue of said writ of attachment until such return be made, and that he also, on or before said day, pay over to the clerk of this court the whole of the proceeds of such sale; and it is further ordered that a certified copy of this order be delivered by the clerk of this court to the sheriff.

70 Said petition for the sale of the property attached is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE MOLINE WAGON COMPMNY, Plaintiff,
vs.
JACOB RUMMEL *et al.*, Defendants.

Now comes the plaintiff and shows to the court that the property actually seized in this cause by the sheriff of Putnam county, as shown by his return on the writ of attachment herein, is still in his possession at the town of Unionville, in said Putnam county; that the same is likely to depreciate in value before the probable termination of this suit, and that the keeping thereof will be attended with much expense.

Plaintiff therefore prays that the court make an order directing the said sheriff to sell the same.

THE MOLINE WAGON COMPANY, *Pl'ff.*,
By JAS. J. PARKS AND
GAGE & LADD, *Its Att'ys.*

STATE OF ILLINOIS, }
County of Rock Island, } *ss:*

—— ——, being duly sworn, on his oath says that he is agent and president of the Moline Wagon Company, plaintiff, and that the facts in the foregoing petition stated are true, as he verily believes.

MORRIS ROSENFIELD.

Sworn to and subscribed before me, the undersigned, a notary Public within & for Rock Island county, Illinois, this 18th
71 day of June, 1880, as witness my hand and notarial seal.

[SEAL.] JAMES J. PARKS,
Notary Public.

And afterwards, at the regular October term of said court, 1880,

and on the 9th day of November, A. D. 1880, the following entry appears of record, to wit:

MOLINE WAGON COMPANY *against* JACOB RUMMEL *et al.*

This day come the parties by their attorneys, the plaintiff by James J. Parks and Gage & Ladd, and the defendant by Fee, Barnett & Dodson, and the plea in abatement of the defendant, Jacob Rummel, being duly called for trial, it is ordered that a jury come, to wit: Moses Shoemaker, R. R. Thompson, John M. Walker, William Erskine, J. Q. Thompson, James S. Taylor, Frank Myers, Thomas Adamson, Samuel Marshall, William P. Fisher, James W. Rogers, [and] David Young, twelve good and lawful men, who were duly sworn to well and truly try the issues joined on the plea in abatement in the above cause, and thereupon evidence is heard, and not being completed at the hour of adjournment, it is ordered that further proceedings be postponed until to-morrow morning.

And afterwards, at said October term, 1880, of said court, and on the 13th day of November, A. D. 1880, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

72 This day come the parties again by their attorneys and the jury as on yesterday, and thereupon the cause is argued by counsel and submitted to the jury under the charge of the court; whereupon the jury retire to consider what verdict they shall render in the premises. And after due consultation the jury return into court the following verdict, to wit: "We, the jury, find the issues for the plaintiff. M. Shoemaker, foreman."

It is therefore considered by the court that the plea in abatement herein to the attachment be overruled and the attachment sustained.

And afterwards, at the regular May term of said court, and on the 17th day of May, A. D. 1881, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

This day comes Huiskamp Brothers, interpleaders herein, by C. L. Dobson, Esq., and files amended interplea.

Said amended interplea of Huiskamp Brothers is in words and figures as follows, to wit:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri, at Kansas City.

MOLINE WAGON COMPANY, Plaintiff,
against
JACOB RUMMEL and E. R. CUTLER, Defendants, and HUISKAMP BROTHERS, Interpleaders.

73 *Amended Interplea.*

Now at this day comes Henry C. Huiskamp, Herman J. Huis-

kamp, and Luke Huiskamp, partners, engaged in trade under the firm name and style of Huiskamp Bros., and for amended interplea in this cause, leave of court having been first had to file the same, state:

1. That under the writ of attachment issued in this cause while the same was pending in the circuit court of Putnam county, in the State of Missouri, and before its removal to this court under the acts of Congress in such cases made and provided, the then acting sheriff of Putnam county wrongfully seized, levied upon, and took possession of the goods, wares, and merchandise fully described and set forth in the sheriff's return endorsed on said writ of attachment, which goods, wares, and merchandise were at the time of such wrongful seizure and levy the property of and in the possession of these interpleaders, who were the owners thereof, in full possession of the same.

2. That such wrongful seizure and levy was made by such sheriff on or about the 8th day of January, 1880.

3. That since the removal of this cause into this court the marshal has sold the goods, wares, and merchandise so seized and levied upon as aforesaid, and now has in his possession and in the possession of this court such proceeds, amounting to $5,246.50.

4. That such proceeds belong to and are the property of these interpleaders, who are entitled to the possession of the same.

5. That these interpleaders protested against the wrongful seizure and levy upon the property hereinbefore referred to, and demanded the return of the same, which has been refused.

74 6. Wherefore these interpleaders ask an order of this court requiring such proceeds to be paid to them, and for costs of this intervention.

TANNEHILL AND FEE,
HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Interpleaders, Huiskamp Bros.

THE STATE OF IOWA, }
The County of Lee, } *sct:*

I, Luke Huiskamp, on oath state that I am one of the interpleaders mentioned in the foregoing writing; that I have heard the same read, and that the facts therein stated are true, as I verily believe.

LUKE HUISKAMP.

Subscribed and sworn to by Luke Huiskamp before me this 29th day of April, 1881.

FRANK HAGERMAN,
Notary Public.

And afterwards, at the regular October term, 1882, of said court, and on the 23d day of October, 1882, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

In the Matter of the Interplea of HUISKAMP BROTHERS.

This day comes the parties, by their attorneys, the plaintiff by Gage & Ladd and Parks, and the interpleaders by Hagerman
75 and Fee, and this cause being regularly called for trial on the interplea aforesaid, the plaintiff refiles its answer to said interplea, and it is ordered that a jury come, to wit: Robert Lynn, M. E. Waller, James M. Jones, George W. Shelley, Henry Benham, John Magee, M. H. Holcomb, John H. Myers, C. Crossan, Adam Terhune, J. Foster Marshal, and David H. Gray, twelve good and lawful men, who are duly sworn to try the issues herein. Thereupon the hearing of said cause is proceeded with, and not being completed at the hour of adjournment, it is ordered that further proceedings be postponed till to-morrow morning.

And afterwards at said October term of said court and on the 27th day of October, A. D. 1882, the following entry appears of record in said cause, to wit:

THE MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

In the Matter of the Interplea of HUISKAMP BROTHERS.

This day again come the parties, by their attorneys, and the jury sworn to try this cause as on yesterday; thereupon this cause is submitted to the jury upon the charge of the court, and the jury retire to consider what verdict they shall render in the premises, and after due consultation the jury return into court the following verdict, to wit:

"We, the jury, find that the property attached in this cause and the proceeds thereof were not and are not the property of the interpleaders. R. Lynn, foreman."

Thereupon come the interpleaders, by their attorneys, and
76 file motion for new trial, and it [is] ordered that time for filing bill of exceptions be extended till January 1st, 1883.

Said motion for new trial is in words and figures as follows, to wit:

Attachment Suit.

In the Circuit Court of the United States in and for the Eastern District of Missouri.

THE MOLINE WAGON WORKS COMPANY, Plaintiff,
against
JACOB RUMMEL and E. R. CUTLER, Defendants.

In the Matter of the Interplea of HUISKAMP BROS., a partnership composed of HENRY C. HUISKAMP, HERMAN J. HUISKAMP, and LUKE HUISKAMP, in above cause.

Motion for New Trial.

Now, at this day come the above-named interpleaders and move the court to set aside the verdict of the jury this day rendered

against them and for a new trial, and assigns the following reasons therefor:

1st. Because the verdict is against the law and the evidence.

2nd. Because the court, against the objections of the interpleaders, admitted illegal and improper testimony.

3rd. Because the court refused to give proper and legal instructions asked by the interpleaders.

4th. Because the court erred in its charge to the jury, and gave them illegal and improper instructions.

5th. Because the court erred in admitting in evidence,
77 against the objections of interpleaders, the affidavit of attachment, the plea in abatement, [and] the verdict and judgment thereon in the main case of The Moline Wagon Company against J. Rummel and E. R. Cutler.

6th. Because the court erred in admitting in evidence the statements of J. Rummel subsequent to the time that the interpleaders took the mortgage and the possession of the goods and merchandise in controversy.

T. M. FEE AND JAMES HAGERMAN,
Attorneys for Interpleaders.

And afterwards, at an adjourned day of the regular October term 1882, of said court, and on the 22nd day of January, A. D. 1883,, the following entry appears of record, to wit:

MOLINE WAGON COMPANY
against
HUISKAMP BROTHERS, Interpleaders.

This day come the parties, by their attorneys, and the motion for new trial herein being now called for hearing, the same is argued by counsel, and, the argument of the same not being concluded at the hour of adjournment, it is ordered that the same be postponed until to-morrow morning.

And afterwards, to wit, on January 23rd, 1883, it being an adjourned day of the regular October term, 1882, of said court, the following entry appears of record, to wit:

78 MOLINE WAGON COMPANY
against
HUISKAMP BROTHERS, Interpleaders.

This day again come the parties, by their attorneys, and the motion for new trial is thereupon further argued by counsel, submitted, and taken under advisement, with leave to file briefs.

And afterwards, on April 3rd, A. D. 1883, it being an adjourned day of the regular October term, 1882, of said court, the following entry appears of record, to wit:

THE MOLINE WAGON COMPANY
against
HUISKAMP BROTHERS, Interpleaders.

This day come the parties, by their attorneys—the plaintiff by Gage & Ladd and the interpleaders by James A. Hagerman. Thereupon, by consent of parties, the court doth order that the time for preparing and presenting a bill of exceptions and a bond for a supersedeas of the judgment in the above cause be extended until next term, at which time the bill of exceptions may be presented, allowed, signed, and sealed, and said bond approved, with the same force and effect as if said action had been had or taken within the time prescribed by the rules of this court.

And afterwards, at the regular May term, 1883, of said court, and on the 9th day of June, A. D. 1883, the following entry appears of record, to wit:

79 THE MOLINE WAGON COMPANY
against
JACOB RUMMEL *et al.*—HUISKAMP BROTHERS, Interpleaders.

This day come the parties, by their attorneys—the plaintiff by W. A. Parks and the interpleaders by James A. Hagerman. Thereupon the motion for new trial heretofore submitted and taken under advisement is by the court denied; and, this cause having been tried by a jury and a verdict rendered against the interpleaders, it is now considered by the court that the said interpleaders, Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, take nothing by their interplea herein, and that the said plaintiff, The Moline Wagon Company, recover against the interpleaders aforesaid its costs herein expended and have thereof execution.

Thereupon come the interpleaders, by their said attorney, and present to the court their bill of exceptions and pray the court to sign and seal the same and make the same a part of the record herein, which is accordingly done. And come also the interpleaders, by their said attorney, and present to the court a writ of error and bond for same and a citation to the plaintiff. Thereupon said writ of error is allowed, said bond approved, and said citation signed.

Said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City.

80 MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and ED. R. CUTLER, Defendants, and HENRY C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, Partners Under the Firm Name and Style of Huiskamp Brothers, Interpleaders.

Be it remembered that on the trial of this cause, before the court

and a jury, upon the issues joined between the above-named interpleaders and the above-named plaintiff on the amended interplea of the above-named interpleaders, which was filed May 17th, 1881, and which is in words and figures as follows, to wit:

Amended Interplea.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City.

MOLINE WAGON COMPANY, Plaintiff,
against
JACOB RUMMEL and E. R. CUTLER, Defendants, and HUISKAMP BROS., Interpleaders.

81 Now, at this day, comes Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, partners engaged in trade under the firm name and style of Huiskamp Bros., and for amended interplea in this cause, leave of court having been first had to file the same, state—

1. That under the writ of attachment issued in this cause while the same was pending in the circuit court of Putnam county, in the State of Missouri, and before its removal to this court under the acts of Congress in such cases made and provided, the then acting sheriff of Putnam county wrongfully seized, levied upon, and took possession of the goods, wares, and merchandise fully described and set forth in the sheriff's return endorsed on said writ of attachment, which goods, wares, and merchandise were at the time of such wrongful seizure and levy the property of and in the possession of these interpleaders, who were the owners thereof in full possession of same.

2. That such wrongful seizure and levy *was* made by such sheriff on or about the 8th day of January, 1880.

3. That since the removal of this cause into this court the marshal has sold the goods, wares, and merchandise so seized and levied upon as aforesaid, and now has in his possession, and in the possession of this court, such proceeds, amounting to $5,246.50.

4. That such proceeds belong to and are the property of these interpleaders, who are entitled to the possession of the same.

5. That these interpleaders protested against the wrongful
82 seizure and levy upon the property hereinbefore referred to, and demanded the return of the same, which has been refused.

6. Wherefore these interpleaders ask an order of this court requiring such proceeds to be paid to them and for costs of this intervention.

TANNEHILL & FEE,
HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Interpleaders, Huiskamp Bros.

THE STATE OF IOWA, }
The County of Lee, } *sct:*

I, Luke Huiskamp, on oath state I am one of the interpleaders mentioned in the foregoing writing; that I have heard the same read, and that the facts therein stated are true as I verily believe.

LUKE HUISKAMP.

Subscribed and sworn to by Luke Huiskamp, before me, this 29th day of April, 1881.

[SEAL.] FRANK HAGERMAN,
Notary Public.

And the answer thereto, which was filed April 23rd, 1882, and which answer is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE MOLINE WAGON COMPANY, Plaintiff,
vs.
JACOB RUMMEL and ED. R. CUTLER, Defendants, and H. C. HUISKAMP, H. J. HUISKAMP, and LUKE HUISKAMP, Interpleaders.

83 Now comes the Moline Wagon Company, plaintiff in the above-entitled cause, and for answer to the interplea of the said interpleaders filed herein denies each and every allegation in said interplea contained, and prays judgment and for its costs.

JAS. J. PARKS AND
GAGE & LADD,
Att'ys for Plaintiff.

The following among other proceedings were had:

The undisputed evidence established that the original suit of the plaintiffs was brought by attachment against the defendants in the circuit court of Putnam county, Missouri, and afterwards by the plaintiffs duly removed to this court on the ground that the plaintiffs were a corporation incorporated under the laws of and citizens of the State of Illinois, and that the defendants were citizens of the State of Missouri; that under the writ of attachment issued from the State court in said cause, before the removal of said cause to this court, the goods, wares, and merchandise, the proceeds of which are in controversy, were seized and taken possession of by the sheriff of Putnam county, Missouri, and after the removal of the cause to this court sold by the said sheriff, and the proceeds thereof, amounting to $5,246.50, returned into this court.

The interpleaders, in support of their title to the property in controversy, offered testimony, which was admitted, tending to prove such title, as follows:

First. A chattel mortgage made by defendant, Jacob Rummel, to the interpleaders on the stock of merchandise, the proceeds
84 of which are in controversy, dated December 24th, 1879, and the notes of said Jacob Rummel to said interpleaders secured thereby, of same date, one for $2,500 and one for $1,500, each due

one day after date, and bearing ten per cent. from date. Said mortgage was signed and acknowledged in due form and filed for record in office of the recorded of deeds of Putnam county, Missouri, on January 1st, 1880. Said mortgage provided that the mortgagees might sell the mortgaged property at public sale on ten days' notice.

Second. That said stock of merchandise was actually transferred and delivered to the interpleaders on January 6th, 1880, prior to the seizure of the same under the writ of attachment issued in the case of the plaintiffs against the defendants.

The interpleaders further offered testimony, which was admitted in evidence, tending to show that they were wholesale dealers in boots and shoes in the city of Keokuk, Lee county, Iowa, and had been for many years; that prior to January, 1878, the defendants, Jacob Rummel & Son, were partners engaged in business in the town of Unionville, Putnam county, Missouri, under the firm name of Rummel & Son, and their business was that of general retail merchandise, including farming implements, wagons, etc.; that in January, 1878, the said partners dissolved said firm and divided the property and business thereof, and both of said partners informed the interpleaders of such dissolution.

That after such dissolution the said Jacob Rummel continued at the same place the general retail merchandise business, and the defendant, Ed. R. Cutler, engaged in the business of selling agricultural implements, including wagons; that after January, 1878,
85 as between themselves, the said Rummel had no interest in the profits or losses of the business carried on by Cutler in the agricultural implement business, and Cutler no interest in the profits or losses of the merchandise business; that the indebtedness for which the stock of merchandise was mortgaged or pledged was for goods sold to Jacob Rummel after the dissolution and division of the business and property of the firm of Rummel & Son; that when the interpleaders took the mortgage, and also when they took possession of the stock of merchandise, they understood that the same belonged to Jacob Rummel, and had been led to so believe from the statements of both Cutler & Rummel; that they took said mortgage and possession of said stock of merchandise in good faith to secure their debt and not to hinder, delay, or defraud, or to assist in hindering, delaying, or defrauding, the creditors of the said Rummel or Rummel & Son; that Rummel made the conveyance and transfer to the interpleaders in good faith to secure their debt and not with the fraudulent purpose of hindering, delaying, or defrauding his creditors, or those of the firm of Brummel & Son.

LUKE HUISKAMP, one of the interpleaders, testified as follows, to wit:

LUKE HUISKAMP being called as a witness in this cause, and being first duly sworn, testified as follows:

Direct examination by Mr. FEE:

Q. What is your name?
A. Luke Huiskamp.

86 Q. Where do you live?
A. I live at Keokuk, Iowa.
Q. Your are one of the parties in the interplea in this case?
A. Yes, sir.
Q. Of the firm of Huiskamp Bros.?
A. Of the firm of Huiskamp Bros.
Q. What business was the firm of Huiskamp Bros. engaged in in 1879 and prior thereto?
A. Selling boots and shoes.
Q. Located at what place?
A. At Keokuk, Iowa.
Q. Who compose that firm?
A. Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, myself.
Q. What was your business in connection with the house?
A. That of selling goods on the road—commercial traveler.
Q. Was Unionville in your territory for selling?
A. Yes, sir.
Q. I will ask you if you knew the firm of Jacob Rummel and Son?
A. Yes, sir; I know the firm of Jacob Rummel and Son.
Q. When did you first become acquainted with the firm?
A. I know that firm; I don't know that I can give the date when I first knew it; it was some years ago.
Q. Now, I will ask you if you know Jacob Rummel?
A. I do.
Q. Where was the firm of Jacob Rummel and Son doing business?
A. At Unionville, Missouri.
Q. Where was Jacob Rummel doing business?
A. At Unionville, Missouri.
Q. At what time did you learn, if you did learn it, of the dissolution of the firm of Jacob Rummel and Son?
A. I cannot give the exact date; it was some time in the spring of '79.
Q. From whom did you learn of the dissolution of the firm of J. Rummel and Son?
A. As a firm from a letter, and personally I had learned it from Mr. Cutler.
87 Q. What did Mr. Rummel say to you about it?
A. He said to me that he had dissolved partnership; I have forgotten the conversation; it has been so long since.
Q. What did Mr. Cutler say to you about it?
A. All that I can remember of it, I saw Mr. Cutler after I had seen Mr. Rummel; I met him on the street; I think it was in front of the store; I remarked to him, says I, Ed. I hear you are out of the store, or words to that effect; I don't remember exactly what it was; and he answered yes, and that was the only conversation I ever had with him on the subject.
Q. How soon after you had the conversation with Mr. Rummel did you have the conversation with Mr. Cutler?

A. It is my impression that it was the same day or the same evening.

Q. Did you have any other information from the firm that it existed after that as a firm?

A. No, sir.

Q. State whether you acted upon that information after that?

A. No, sir; I did not altogether; the facts in the matter are these: that Rummel and Son were at the time owing Huiskamp Brothers largely; had not paid up nor near paid up—I don't know for how long afterwards—but the account was continued in just the same way without any change.

Q. After that were you ever informed by either of these gentlemen that there was any partnership existing between them?

A. No, sir.

Q. Did you know the amount of the account at the time you received information of the dissolution?

88 A. The account of Huiskamp Bros?

Q. The exact amount.

A. No, sir, not the exact amount; it was a large amount over $4,000, if I remember right.

Q. State whether you continued to sell Mr. Rummel goods after that.

A. I sold Mr. Rummel goods—yes, sir

Q. Where would you be when you would make the arrangements for the goods?

A. For the purchase?

Q. Yes, sir.

A. I would be at the sample room at the hotel.

Q. At Unionville?

A. Yes, sir.

Q. He would purchase of you there?

A. Yes, sir.

Q. You would take his orders?

A. Yes, sir.

Q. How long did you continue to sell him goods?

A. Until—I have forgotten the date of the last bill we sold him; it was some time in December.

Q. Of what year?

A. 1879.

Q. What do you say about being in Unionville about the 24th of December, 1879?

A. Huiskamp Bros. sent me there on information that they had received from Dunn's Commercial Agency.

Q. For what purpose did they send you there?

A. For the purpose of investigating Mr. Rummel's affairs financially.

Q. You went at the instance of the firm?

A. Yes, sir.

89 Q. For the purpose of investigating his standing?

A. Yes, sir.

Q. What object did you have in investigating his standing?

A. The fact of his owing Huiskamp Bros. money.
Q. With a view of securing your claim?
A. Yes, sir.
Q. To protect your interests?
A. Yes, sir.
Q. When you were there, what occurred between you and Mr. Rummel?
A. Mr. Rummel made me a statement of his financial conditions which looked favorable.
Q. What kind of a statement did he make?
A. I asked him, as we usually do in cases of that kind, to give us a statement of his financial affairs—that is, how much he owed and what his assets were? We usually arrive at this information by subtraction; find the difference between what a man owes and his assets—what he has to pay.
Q. What was said about securing your claim?
A. I spoke to Mr. Rummel previous to leaving there that our claim was large and we had every confidence in Mr. Rummel's honesty, and requested him that if anything should happen—any trouble arise that would jeopardise Huiskamp Bros.' claim—that he would secure it, and Mr. Rummel promised to do so.
Q. How was he to secure you? What was said about what property he had to secure you with?
A. The proposition was that if anything would turn up Mr. Rummel was to give me, or rather give Huiskamp Bros., a mortgage on the goods, or part of the property, on the merchandise in the store.
90 Q. What did he say as to that?
A. He promised faithfully that he would do it; upon that promise I went away.
Q. What did you state to him, about the time of leaving or in any conversation there, that that day was the 24th of December? Just state what you said about that, if anything.
A. There was nothing said beyond that.
Q. What did you say about that, what do you now say as to that, in any conversation which you had with him; what did you say to him about this being the 24th of December?
A. I don't recollect distinctly of anything being said in regard to that being the 24th of December; I may have said so.
Q. What did you say about when that security should be dated?
A. It seems to me there was something of the kind, but I don't recollect it now; it has been so long.
Q. You don't really remember anything of the kind?
A. Nothing specially.
Q. Now, what other purpose did you go there for—other than to secure your claim and protect your interest?
A. None whatever.
Q. Upon that agreement of Mr. Rummel's you went home—the agreement to secure you?
A. Yes, sir.

Q. Then, how soon after you went home did you hear from Unionville and Mr. Rummel?

A. I think it was the 2nd day of January, perhaps the morning of the 3rd of Jan., 1880, I received a letter from him, from Mr. Rummel's house, inclosing two notes, and stating that he had given a chattel mortgage to secure the two notes. One was for the
91 amount due us, and the other for some Keokuk creditors, requesting the house to see them and get their claims.

Q. At the time you went to Unionville, Missouri, to see Mr. Rummel about your claim, how much did he owe the firm of Huiskamp Brothers?

A. $2,500.

Q. What did the firm do, if anything, in the way of inquiring concerning the other claims that Mr. Rummel referred to?

A. I saw the other creditors and stated to them the contents of the letter, and got their statements of accounts, which I took to Unionville the following day.

Q. After you got that letter from Mr. Rummel that you referred to, what did you do in the way of going to Unionville?

A. I went to Unionville to investigate the matter—to see how it stood, what was being done, &c., as one naturally would, having so large a claim as ours.

Q. After receiving the letter you say you went to Unionville?

A. Yes, sir.

Q. What else did you do, if anything, in the way of getting others to go with you?

A. We telegraphed to Captain Fee, at Centerville, to meet me at Sedan, which is a cross station between Centerville and Unionville from Keokuk. Captain Fee met me there the same evening.

Q. Sedan is a crossing of the Wabash and the Burlington and Western?

A. Yes, sir; Captain Fee came there, and, together, we went to Unionville.

Q. Now, what day was that, if you remember?

A. That was on the 5th of December, if I remember right.

Q. Of December?

92 A. Of January.

Q. Of what year?

A. 1880.

Q. About what time did we get to Unionville?

A. About supper time.

Q. About what time would that have been—would it have been an early supper or a late one?

A. I should judge it was in the neighborhood of 6 o'clock.

Q. In the neighborhood of 6 o'clock?

A. Yes, sir; or later.

Q. While there what did you and your attorney do after getting to Unionville?

A. We got our supper, and we went to Mr. Rummel's store and inquired for him.

Q. State whether you found Mr. Rummel at the store.

A. No, sir; we did not find him there at the store.
Q. From there where did you go?
A. To Mr. Bryant's office.
Q. Whose?
A. Mr. Bryant and Christy's office.
Q. What do you say about seeing Mr. Rummel there that evening?
A. I don't exactly remember whether we saw Mr. Rummel there or not, or whether he came in shortly afterwards.
Q. Did you see him there that evening?
A. Yes, sir.
Q. Then what was done?
A. The matter was talked over, and Mr. Rummel said that the mortgage had been left with the recorder, and I showed him the discrepancy between the amount of the note given and the amount of the actual indebtedness. We decided that evening to rectify
93 that the first thing in the morning, as soon as the recorder could be found.
Q. What was the difference, if you remember? Have you got the notes?
A. No, sir.
Q. Do you remember now the difference between the statements that the Keokuk creditors gave you and the amount of the note?
A. In the neighborhood of $900.
Q. I will ask you to examine that note and see if you can determine anything from it.
A. Yes, sir; they are the figures in lead pencil.
Q. What figures do you find there?
A. I first find $1,500, below it $909.83 subtracted from the $1,500, leaving a balance or residue of $590.17.
Q. What does that $590.17 represent?
A. It represents the difference between the actual amount that Mr. Rummel was indebted to the Keokuk creditors outside of Huiskamp Bros. and the $1,500 note that he had sent.
Q. It represents the true Keokuk indebtedness?
A. Yes, sir.
Q. Who made these figures?
A. I did.
Q. When?
A. Those figures were made at the time.
Q. What directions did you give, if any, or what was said about crediting the difference on the note?
A. My directions were to credit it on the note, so that the note would be only for the amount he actually owed the other Keokuk creditors.
Q. Do you remember who made that credit on there?
A. That is Mr. Fee's handwriting.
94 Q. When was it made?
A. Jan. 6th, 1880.
Q. What, if anything, was done; what was said about the account and notes mentioned in the mortgage given to you by Mr. Rummel?

A. In talking the matter over we found that the mortgage was given for so much larger amount—covered so much larger amount of property than the claims due—that we decided upon releasing the notes and accounts.

Q. What was said by Mr. Rummel as a reason why he would like to have any of them released, if you thought you could afford to release any and not injure your security?

A. He wanted to get them to pay—to give to his other creditors.

Q. What then did you do in the way of releasing them?

A. The following morning—I have forgotten how soon it was, but it was as soon as I could do so—we met and made the necessary entry on the records, and also on the mortgage, and I paid for the recording of it.

Q. At that time—the morning of the 6th—where was the mortgage?

A. Where was the mortgage?

Q. Yes, sir.

A. The mortgage was in the hands of the recorder.

Q. Where did you find the mortgage?

A. In the hands of the recorder.

Q. What recorder?

A. The recorder of Putnam county, Missouri.

Q. About what time in the morning did you get it?

A. I think about 8 o'clock.

Q. In the forenoon?

A. Yes, sir.

Q. Where did you get it?

95 A. In the office of the recorder.

Q. Who paid for the filing of it?

A. I did.

Q. Go back to the 24th of December, 1879, if you please. While at Unionville, Missouri, what knowledge or information had you that the Moline Wagon Works had a claim against Mr. Rummel and Mr. Cutler or a claim against Mr. Cutler?

A. I had none.

Q. When you got to Unionville and examined the mortgage state whether you accepted the mortgage as security for your debt.

A. I did.

Q. Now, for what purpose did you accept the mortgage? Why did you want the mortgage?

A. To secure the claim of Huiskamp Bros. against Mr. Rummel.

Q. Was there any other reason or any other purpose which you had in accepting the mortgage than wanting this security?

A. No, sir; none.

Q. You have already stated that you had got the correct statement from the other Keokuk creditors. What objection did you make to their being in your mortgage?

A. I made no objection to it.

Q. Did you take up the indebtedness of Mr. Rummel yourself? They gave you the amount of their claims?

A. Yes, sir.

Q. They assigned them to you, I believe?

A. Yes, sir.

Q. Did you have any other object in view in taking the mortgage or accepting it after you found it had been given than to secure your claims mentioned in it?

A. No, sir.

96 By the COURT: What was said about assigning?

By Mr. FEE: He said they had assigned or transferred them to him—these Keokuk creditors.

By the COURT: They assigned them to him after the mortgage was given?

By Mr. FEE: I suppose so; yes, sir.

By the COURT: Is that claim included in the mortgage?

By Mr. FEE: Yes, sir.

By the COURT: Did you pay anything for it?

A. I was not there at the time the assignment was made.

By Mr. FEE: What knowledge did you have that Mr. Rummel was seeking to hinder and delay his creditors, if he had any such intention?

A. I had none, sir.

Q. Had you any purpose or intention to assist him in any manner in hindering and delaying his creditors in the collection of their debts?

A. No, sir.

Q. What, then, was your purpose?

A. Why, to secure the claim of Huiskamp Bros. against Mr. Rummel.

Q. In releasing the notes from the lien of this mortgage what was the object of that?

A. The object was to assist Mr. Rummel in paying his debts.

Q. State whether at that time you thought you had ample security for your debt.

A. I did; yes, sir.

Q. Where did the goods for which the note was given go to?

A. They went to Unionville.

Q. Unionville, Missouri?

A. Yes, sir.

97 A. State to what place.

A. To the building occupied by Mr. Rummel.

Q. To the store conducted by him?

A. Yes, sir.

Q. I will ask you to state if any of them were there on the 8th or 9th of January, 1880?

A. Yes, sir; a good many of them were there.

Q. Now, I will go back. What arrangement did you make with Mr. Rummel, say the evening of the 5th, about taking possession of the stock of goods under your mortgage?

A. It was decided, I believe, between us that I should take possession the next day, the day following.

Q. State whether or not it was agreed that you should take possession the next morning.

A. It was.

Q. On the morning of the 6th what did you do in the way of taking possession of the goods, the morning of the 6th of Jan.?

A. We went to the store and Mr. Rummel gave me the possession.

Q. Who had the keys to the store after that?

A. Mr. Charles Agee.

Q. Did you have any of them?

A. I think not.

Q. After the keys were turned over to you by Mr. Rummel then you gave them to the clerk—one of them?

A. Yes, sir.

Q. Tell the jury what you did after you got possession of the store and the keys.

A. I then employed the clerks that were there; and we all went to cleaning up the old goods, boots and shoes. I remember
98 that fact, because that was the only thing that I was acquainted with.

Q. What did you do; you say you went to work cleaning up; what did you do to clean up; did you clean up?

A. We succeeded in cleaning up most of the boots and shoes, or nearly so.

Q. What do you say about moving or removing any of the stock?

A. Yes, sir; I found a large lot of boots and shoes in the back part of a room upstairs where they would become damaged.

Q. What did you do with them?

A. Took them downstairs—took a part of them downstairs and cleaned them up very carefully.

Q. What did you do in the way of discharging any of the clerks or any one in the employ of Mr. Rummel prior to that time?

A. Yes, sir; I think I did discharge one. I have really forgotten the circumstance.

Q. Was there any one turned off by you—any one that you did not retain that had been in the employ of Mr. Rummel?

A. Yes, sir.

Q. Now, what do you say about it being generally known around town there that you had taken possession?

A. I don't know; I presume it was generally known. A good many of my friends—people that I knew—twitted me about it.

Q. What do you mean by that?

A. I mean they would come in and say to me, Huiskamp, you have got a store now, or something of that kind.

Q. What was Mr. Rummel doing after that?

A. What was Mr. Rummel doing?

A. Yes, sir.

A. I have no knowledge of that Mr. Rummel did. I saw
99 him there once or twice a day, and perhaps oftener.

Q. Who were those persons that talked to you—twitted you—about being a storekeeper down there at Unionville?

A. I don't know that I can mention any specially

Q. What do you say about Mr. Parks here—this gentleman who represents the Moline Wagon Works—having any knowledge of it?

A. I remember Mr. Parks was there once or twice, perhaps oftener, at the store.

Q. Was it before the levy?

A. Yes, sir; I also met him at the hotel, and Mr. Ketchum, another gentleman who represents the Moline Wagon Works.

Q. Who was he?

A. At that time he was an agent of the Moline Wagon Works.

Q. Do you remember his given name?

A. No, sir; I don't remember.

Q. Is that the Mr. Ketchum that swore out the writ of attachment against Mr. Rummel, or don't you know anything about that?

A. I don't know.

Q. What do you say about their being in the store after you took possession and before the writ was levied?

[.A] Mr. Parks and Mr. Ketchum?

Q. Yes, sir.

A. I think they were there. I am not positive whether they were or not.

Q. What, if anything, did Mr. Parks say about your being in possession?

A. I don't know that I can recall any special conversation in regard to it.

Q. What, if anything, did he say about putting you out to-morrow?

100 A. There was a talk of that kind at the hotel—a kind of joking talk.

Q. What was the talk at the hotel?

A. Simply exchanging jokes of that kind—that it would be his turn to-morrow or the next day. It seemed to be in a good-natured manner.

Q. In what capacity was Mr. Parks there?

A. As the attorney of the Moline Wagon Works.

Q. How long did you hold possession of the stock of goods, Mr. Huiskamp?

A. Three days, I think.

Q. What, if anything, did Mr. Rummel have to do with the stock of goods after the morning of the 6th, when you took possession?

A. He had nothing to do with it that I know of.

Q. You held possession until what time?

A. Until the morning of the 9th.

Q. What month?

A. January, 1880. I think it was the morning of the 9th.

Q. What occurred on the morning of the 9th?

A. On the morning of the 9th, after breakfast—I got up late, I remember, along about 8 o'clock—I went to the store. There I found Mr. Agee, the clerk, — had opened the store, and Mr. Rummel and Mr. Guffy, and Mr. Rummel and Mr. Guffy was in a discussion. I don't remember what Mr. Agee was employed at or doing. I don't remember whether there was any one else in the store or not at the

time. Mr. Guffy and Mr. Rummel—by the way, Mr. Guffy was the sheriff, or, rather, was at that time, the sheriff of Putnam county—and he told me upon my entrance that he had levied upon the stock of goods of Mr. Rummel.

Q. What did you do and what did he do?

101 A. I told him the stock of goods were ours and not Mr. Rummel's. He remarked something of the kind that I was too late. He then took possession of the stock of goods and closed the store.

Q. For what purpose and under what authority did you take possession of the store room and the stock of goods?

A. Under the mortgage that Mr. Rummel had given me.

Q. By Mr. Rummel's consent?

A. By Mr. Rummel's consent.

Q. I will ask you to examine that and see if that is the mortgage.

A. Yes, sir; that is it. I recognize it by the writing on it.

Q. Who made the writing on the back of that mortgage?

A. I did, sir.

Q. When did you make it?

A. I made them in the recorder's office at the time I got it from him.

Q. At the time it purports to have been made, Jan. 6th?

A. Yes, sir.

Q. What did you do after you took possession besides cleaning up and arranging the stock, moving the goods, etc.?

A. Nothing that I remember of.

Q. I will ask you what you did in the way of selling them, holding them out for sale, and why you pursued the course you did?

A. I sold the goods—that is, I don't know that I sold them individually, but perhaps Mr. Agee and another clerk that was there sold them.

Q. After you took possession?

A. After I took possession.

Q. What was done with the proceeds of the sales?

102 A. The proceeds of the sales, I have them still.

Q. What was done in the way of keeping the amounts and keeping them separate of the sales?

A. I purchased a book—a small book—and entered up the receipts as I found them in the evening—every evening that I was there.

Q. Purchased a separate book for that purpose?

A. Yes, sir.

Q. What was the arrangement about proceeding to dispose of the goods in the mortgage?

A. Not being an attorney I did not know what to do in regard to it; and I made no move from the fact that Captain Fee, our attorney, had promised to return the following day, and I was to see him in closing out the matter. It was the first mortgage of the kind I had taken.

Q. It was with a view of disposing of the goods under the mortgage?

A. Yes, sir.
Q. I believe you stated that you had the amounts of the sales yet?
A. Yes, sir.
Q. Hold them subject to this action?
A. Yes, sir.
Q. Did you have any other object in view in taking possession of the goods on the morning of the 6th except to secure your claims mentioned in the mortgage?
A. No, sir.
Q. Had your counsel returned at the time of the levy of the attachment of the goods?
A. I think not; no, sir.

Cross-examination by Mr. GAGE:

103 Q. Mr. Huiskamp, this remark that you made to Cutler that he was out of the store you say you made in front of the store?
A. I think that is my recollection, sir.
Q. After you had had a conversation with Rummel, you think, the same day?
A. I think so.
Q. Where had Cutler formerly been—where had you seen him—where had you been in the habit of seeing him?
A. Occasionally at the store, and sometimes on the streets.
Q. Had you known who had been keeping the books about the store?
A. No, sir.
Q. Do you know whether Cutter done it or not?
A. No, sir.
Q. Did he not attend to the correspondence?
A. No, sir.
Q. Don't you know that Cutler attended chiefly to the agricultural implement business?
A. I have no knowledge to the contrary.
Q. When you had seen Cutler, where was it that you saw him?
A. I had met Mr. Cutler on the streets and in the store; they were about the only places to meet him.
Q. You say you did not act upon the information. They were then owing you a large amount of money?
A. Yes, sir.
Q. How long was it before you say you did act upon it?
A. I don't understand your question.
Q. You did ultimately act upon that or some such statemont, did you not—that is, you began to do business with Rummel exclusively after that statement was made with Cutler?
104 A. No; we treated them. We sold the good- to Mr. Rummel, but the account was never changed.
Q. For the reason that they were owing you?
A. Yes, sir.
Q. Mr. Huiskamp, can you tell when that conversation was?

A. No, sir; I cannot.
Q. Can you tell what year it was in this conversation with Cutler and Rummel?
A. It was in the spring of '79.
Q. You testified in this case before, did you not?
A. Yes, sir.
Q. Did you not then say it was in the spring of '78.
A. If I did it was an error in the dates.
Q. Did you not testify on that trial: I know of the condition in the spring of '78 from Mr. Rummel at his store?
A. If I said '78 it was evidently an error.
Q. What fixes it in your mind as being the spring of '79?
A. From that fact that it was in a short time of his failure and the making of this mortgage.
Q. How long ago did you testify here before?
A. A year. Is it a year ago? I have really forgotten that.
Q. It was whenever the trial was.
A. Yes, sir; exactly.
Q. You have no event, or anything of that kind, to fix it in your mind as being the spring of '78?
A. No, sir.
Q. Or '79?
A. Or '79, positively.
Q. What was the occasion of your going to Unionville on the 2nd of December, '79?
A. What was the occasion of my going there?
Q. Yes, sir.
105 A. From the fact that Mr. Rummel owed Huiskamp Bros. a sum of money, and that they had learned, through what we call Dunn's agency and commercial agencies of that class, that Mr. Rummel was in trouble.
Q. In what trouble?
A. Well, it said, if I remember correctly, that parties interested should look after their claims, or something like that.
Q. You went there and Mr. Rummel made a statement?
A. I went there and Mr. Rummel made me a statement.
Q. What did that statement show?
A. It showed a surplus over and above his indebtedness.
Q. How large a surplus?
A. I cannot tell.
Q. Large or a small one?
A. Quite a large surplus.
Q. He had the goods and accounts and notes there to show you?
A. Yes, sir.
Q. And his books?
A. Yes, sir; I did not see his accounts; I did not see his notes.
Q. From his statement of them you were satisfied?
A. Yes, sir.
Q. And went away satisfied?
A. Yes, sir.

Q. You did not ask him to give you any security then; you did [not] want any security then?

A. No, sir.

Q. Did not desire any?

A. No, sir.

106 Q. Now, what was it about his making you or securing you if anything should happen; what is that?

A. I requested Mr. Rummel, or stated to him, that in case anything should occur or happen that would jeopardize Huiskamp's Bros.' claim that I wanted him to secure us.

Q. Mr. Rummel was, in your opinion, in a perfectly solvent condition?

A. Yes, sir.

Q. Now, what was there that had been stated to you that made it probable or possible to your mind that something was going to happen to Mr. Rummel?

A. Well, the commercial reports.

Q. He had proved that to your satisfaction to be without foundation?

A. Yes, sir.

Q. Now what was there that made you make that remark to him?

A. It is not exactly a rule, but it is a caution which all business men take, especially where the parties are largely indebted to them, to request that they secure them; it is nothing more than natural.

Q. To tell a solvent man to secure you?

A. Yes, sir.

Q. How long had you been there?

A. How long had I been there; where?

Q. At Unionville?

A. I came the evening of the 23rd, and left there on the morning of the 24th.

Q. What time in the morning?

A. I could not tell you; it was early.

Q. How long a conference did you have with Mr. Rummel?

107 A. I could not tell you.

Q. Anything said between you about his relations with Cutler?

A. No, sir.

Q. Nothing said at all about Cutler?

A. No, sir.

Q. Nothing said about any trouble between him and Cutler?

A. No, sir; not that I remember of.

Q. On the morning of the 3rd you received those notes from Mr. Rummel?

A. Yes, sir.

Q. Two notes; one for the amount of your own debt and another for $1500, payable to yourself?

A. Yes, sir.

Q. They were overdue when he gave them?

A. It seems so.

Q. They were, were they not, on the face of them?

A. Yes, sir.

Q. Made on the 24th of December and payable in one day, and you got them on the 3rd of Jan.?

A. The 2nd or 3rd.

Q. Your bills were not due; they were not due in the regular course of business, were they; there was included in them several hundred dollars that was not yet due?

A. Perhaps there was.

Q. There was, was there not?

A. I have not examined the bills and could not state that.

Q. Don't you know that a portion of that indebtedness was not due?

A. I do not know how it averaged.

Q. I did not ask you whether it averaged or not; I asked you whether a portion of it was not due?

108 A. A portion of it would perhaps not be due according to the way the bills would read.

Q. You found out that he had made you a note for $1,500. He stated in the letter that he had made it to cover $590 of indebtedness; you found it was to cover $590 of indebtedness when you came to examine it?

A. It did not state so.

Q. I know that, but the letter stated it was for the benefit of certain creditors, the note of $1,500, but when you came to examine it you found it was for $590 too much?

A. Yes, sir.

Q. You say that these Keokuk creditors assigned their claim to Huiskamp Bros.?

A. Yes, sir.

Q. You say you were not present when they assigned them?

A. No, sir.

Q. Where were you when they assigned them?

A. I might have been through the store; I could not say positively.

Q. Have you their assignments?

A. No, sir; I have not.

Q. Then you don't know that they did assign them?

A. Only from hearsay.

Q. You only heard from hearsay that they assigned them. You don't know that Huiskamp Brothers ever paid them, do you? You never heard of them that they had paid these creditors?

A. No, sir; I never heard that Huiskamp Brothers had paid them for it.

Q. You then went to Unionville and met Captain Fee on the way?

A. Yes, sir.

109 Q. Getting there on the night of the 5th?

A. Yes, sir.

Q. Went to Mr. Rummel's store first after supper?

A. Yes, sir.

Q. Who did you find there?

A. I don't know.
Q. Find anybody there?
A. I presume we did. We did not find Mr. Rummel there.
Q. Did you inquire for Mr. Rummel?
A. We did.
Q. Of whom?
A. I don't know.
Q. Anybody in the store?
A. Yes, sir.
Q. The store was open then?
A. Yes, sir.
Q. You were directed from there to where Mr. Rummel would be found?
A. Yes, sir.
Q. By somebody in there?
A. Yes, sir.
Q. The clerks were there and the store was open?
A. Yes, sir.
Q. Was Mr. Fee with you then?
A. Yes, sir.
Q. You went to Mr. Bryant's office, and there were either joined [by] or found Mr. Rummel?
A. Yes, sir.
Q. Now, what was it that occurred there?
A. Mr. Rummel told me that the mortgage was at the courthouse.
Q. He did not tell you that in the letter?
110 A. No, sir; I think not. I don't think Mr. Rummel said anything in the letter about its being filed or left for filing. I then showed him the discrepancy between the amount of the note that he had sent down and the actual amount of his indebtedness.
Q. Go on; I could not hear it all.
A. I pointed that out; after that—I don't know just how that occurred—that is, just exactly how it occurred—there was considerable conversation in regard to the matter, but it was finally decided to make out this endorsement—this difference between the amount of the note and the amount actually paid—and I released the notes.
Q. How did they come at it?
A. In talking the matter over we found that we had more than enough to secure the claim of Huiskamp Brothers, and Mr. Rummel was anxious to have these notes to pay off indebtedness that he owed to other creditors; so we released the notes and accounts.
Q. Just tell us how you came to find out that you had more than sufficient security for the $4,000 or the $3,000 that he owed you?
A. By knowing about the value of the stock and the value of the buildings.
Q. Any conversation had about it there?
A. Yes, sir.
Q. There was?
A. Yes, sir.

Q. Mr. Huiskamp, have you not omitted something about that?
A. I may have, sir.
Q. Did you not testify here at the last term that you and Mr. Fee came to the conclusion that it was necessary for you
111 to release a portion of this property in order to avoid the suspicion of fraud on your part?
A. I think not.
Q. Was not that your testimony as why that release was made; that it was to avoid any suspicion of fraud on your part in taking $12,000 or $13,000 worth of property to secure about $3,000 or $4,000?
A. I think not.
Q. Don't you know you testified that it looked too large, and Mr. Fee said you could not hold that amount of property as security for your debt; it was so large a mortgage it would look fraudulent, and I did not want it?
A. Yes, sir; I may have testified to that.
Q. Was that the fact?
A. It may have been talked over and I was giving my mind.
Q. I want you to recollect and see whether it was so?
A. I have some recollection of a conversation of a similar character; whether it was just exactly that or not I don't know.
Q. It did not look right to Mr. Fee?
A. I should object to that language.
Q. I know it; but did you use it when you were testifying here before—it did not look right to Mr. Fee?
A. I will admit having said that.
By the COURT: You say you will admit having said that?
A. Yes, sir; there may have been a conversation of that kind occurred that I don't recall now.
By the COURT: You recollect of testifying?
A. To that—no, sir; not just exactly that, but similar to that.
Q. Here is another place: Told Rummel the mortgage was for an unnecessarily large amount, and to avoid suspicion of
112 fraud on our part would release notes and accounts.
A. Yes, sir.
Q. You told him that?
A. I think that was part of the conversation we had.
Q. Then the occasion of that release being made was not that Mr. Rummel begged you for the notes in order that he might distribute them to his creditors, but because you told him that you had to release them because you could not hold them. That is the fact, is it not?
A. No, sir.
Q. Did you not tell him that that was too large an amount; that you could not take such a mortgage as that; that, in fact, right on the face of it it was a fraudulent one?
A. I don't remember the conversation in regard to that.
Q. You do remember that in that conversation between yourself and Mr. Fee and Mr. Rummel and Bryant, in Bryant's office, that was suggested to Mr. Rummel—that he had given a mortgage on too

much property; that it looked fraudulent; that you could not take such a mortgage as that, and you so testified at the last term, did you not?

A. I have no recollection of testifying to that.

Q. You have a recollection, however, you say, that you did tell him; that you did say here that the mortgage was too large?

A. Some such conversation. As to the wording of it, I don't remember.

Q. You have not lost your memory, have you, Mr. Huiskamp, any since testifying here before?

A. Lost it?

Q. Yes, sir.

A. I think not.

113 Q. That was just as important a matter then as it is now. So, then, you did release the notes?

A. Yes, sir.

Q. You still retain what?

A. The mortgage on the undivided half of the building and the stock of goods.

Q. Now, there is something that you have not told, Mr. Huiskamp. You left Mr. Rummel in a perfectly — condition, and then you find him now giving up his property—putting it out of his hands—in a week after. Did you not ask him the cause of that, and did you not talk about it there?

A. At the time?

Q. At the time.

A. The cause of it I learned the second trip. When I was there the first time I knew nothing about it.

Q. You detailed this conversation at Bryant's office. I ask you if you have not left out something. You say that you had left him a week before a perfectly solvent man?

A. Yes, sir.

Q. You found him now reduced to the necessity of mortgaging everything he had in the world and giving, as you say, an excessive mortgage. Did not you and he have anything to say as to why he done it?

A. No, sir; the reason why he done it was that he wished to secure his creditors.

Q. He could have made a mortgage for $2,400 to secure Huiskamp Bros.?

A. Yes, sir.

Q. You did not want it the first time, nor he did not want to make it?

A. No, sir.

114 Q. What was the thing that you told him if anything should happen that he must secure you? What was the thing that had happened that he did secure you?

A. What was it that had happened?

Q. Yes, sir; the turning up of the Moline Wagon Company's notes?

A. At the time of the first conversation in regard to the matter I knew nothing of it.

Q. You did know something of it in the last conversation?

A. Yes, sir.

Q. There was something talked about that. Come down to that and tell the jury what that was?

A. I have no recollection as to what that was. I knew that the notes were there. At least I had been told that the notes were there.

Q. Who by?

A. Mr. Rummel.

Q. Where?

A. At Unionville.

Q. When?

A. Some time that evening.

Q. There at Bryant's office?

A. At Bryant's office.

Q. You knew, then, the occasion of his having made the mortgage was that these notes here in suit were there?

A. The Moline Wagon Company Works' notes?

Q. Yes, sir.

A. I took it for granted from what they said that they were.

Q. You knew it after these notes turned up that he had conveyed to you some $13,000 worth of property to secure $3,000. You found that out at Bryant's office that night?

A. 4,000.00.

115 Q. I mean $3,900?

A. That was spoken of then.

Q. You took a real estate mortgage on how much property?

A. One-half interest in the store building.

Q. Did you in assessing your values—did you assess the value of that—take that into consideration?

A. I think it was taken into consideration.

Q. You have that mortgage with you, have you?

A. Yes, sir; I think that mortgage is—Captain Fee has it.

Q. You have never foreclosed it, have you?

A. No, sir.

Q. Still hold it on Mr. Rummel's half of the property?

A. It is on the attachment with the lot of goods, I believe.

Q. Then you did something further that night. What put it into your head to take possession of that stock of goods?

A. I think it was done by Captain Fee's advice; I don't remember; at his suggestion.

Q. How came you when seeking to secure your $2,500 debt to let go the $5,000.00 worth of notes and accounts that you had, and decide that night to take possession of the store in Unionville the next morning and commence selling goods, give up your security, — up the notes, and go into the retail boot and shoe business?

A. I could not tell you.

Q. You don't know why it was?

A. No, sir.

Q. You never did such a thing as that before, did you, Mr. Huiskamp?
A. No, sir.
Q. To set up on so short a notice as that?
A. No, sir.
116 Q. You don't know why it was that you concluded to let go the notes and accounts and decide to carry on business in Unionville?
A. No, sir; I don't that I have.
Q. You did it, however?
A. It was done; yes, sir.
Q. The next morning, what was said then about your taking possession? How came you to take possession? What did you do it for—to secure your claim?
A. I have not legal knowledge enough to say just why it was done; it was done under the advice of Mr. Fee.
Q. Mr. Rummel wanted you to take possession?
A. Yes, sir; he did.
Q. What was done the next morning?
A. The next morning?
Q. Yes, sir.
A. After taking possession of the stock?
Q. Yes, sir.
A. I went to the store and Mr. Rummel gave me possession of the stock of goods.
Q. You hired the clerks?
A. Yes, sir.
Q. Set up keeping store?
A. Yes, sir.
Q. And started about your improvements in the business?
A. Yes, sir.
Q. When did Mr. Fee go away?
A. That same night.
Q. What time in the evening—after you had taken possession?
A. No, sir; before.
Q. He was there, however, when the programme was set-
117 tled that you would take possession?
A. Yes, sir.

By the COURT:

Q. Mr. Fee?

By GAGE: Did you state at the last trial that Fee went home at noon?
A. I might have stated that, sir; I know he went home; whether he went home in the morning or the after *that* noon I don't remember.
Q. If he went home at noon he was there after you had taken possession of the store and gone to keeping store?
A. I think not; I don't think Captain Fee was present.
Q. You and he stopped together at the same hotel?
A. Yes, sir.

Q. You say you went to keeping store there in pursuance of that mortgage?

A. Under authority of that mortgage.

Q. Did Mr. Fee go away on the train?

A. I don't remember whether he went on the train or whether he went in a buggy.

Q. Which is the way usually taken in going away from there?

A. On the trains, though sometimes when a person is in a hurry they go by team.

Q. Do you know when the train goes?

A. No, sir.

Q. Or did go that time?

A. No, sir.

Q. Do you know when it went three days afterwards, on the 9th of January?

A. When it went?

Q. Yes, sir.

A. I remember about what time it comes in, but I have forgotten what time it goes away. My impression is that the trains
118 run from Unionville east—or rather north—in the morning.

Q. The day the attachment was served were you there, and for some time afterwards, or did you go away on that train between 11 and 12 o'clock?

A. I remember of going away that same day, but I have forgotten the hour.

Q. It was some time after the attachment was made?

A. It was after the attachment was served; yes, sir.

Q. Then you did not know that under that mortgage, Mr. Huiskamp, you had not any business to go to keeping store?

A. I did not know. Mr. Fee had gone away.

Q. Did not that mortgage tell you how you could sell the goods?

A. I don't think I read the mortgage; in fact I know I did not—did not read the mortgage.

Q. Mr. Rummel turned over his clerks to you and you went on selling the goods. He saw you hire them, did he not?

A. I could not say that he did.

Q. He was there?

A. I could not tell you whether he was there and saw me hire them or not.

Q. Did you not state that he went into the store, turned the keys over to you, and you hired the clerks then and there?

A. I hired them some time during the day, but what time I could not say.

Q. Did not Mr. Rummel come into the store from time to time and see you keeping store in there?

A. Yes, sir.

Q. And he knew that you were doing it, did he not?

A. Yes, sir.

119 Q. And he was in and out during the three days that you were keeping store there all the time?

A. No, sir.

Q. And you did not know that the mortgage authorized you to sell that stock at public sale at the court-house on a notice?

A. I don't think I did.

Q. You did not stop to inquire?

A. No, sir.

Q. The only discussion of the question was had that night in Bryant's office between Mr. Rummel and you when you were to take possession and go ahead with the business?

A. There may have been some other discussion in the morning.

Q. Well, it was determined that night?

A. I think so; yes, sir.

Q. And it was determined in the discussion that night that you should do the thing you did do the next day. Mr. Fee, Mr. Bryant, and everybody knew that you were going to take *take* possession?

A. I think, sir, those that were——

Q. Mr. Rummel certainly did?

A. Yes. sir.

Q. You say Mr. Rummel was in the store when you went into it and found the sheriff there?

A. Yes, sir.

Q. And you told him that that was your store?

A. Yes, sir; something of that kind.

Q. He said what?

A. That I was too late.

Q. What for?

A. That he had made the attachment already.

120 Q. Did he not tell you that you were too late; that Mr. Rummel had declared himself the proprietor and turned the keys over to him?

A. Yes, sir.

Q. That is what he said?

A. Yes, sir.

Q. What was it that you told the sheriff, Mr. Huiskamp, exactly?

A. It was to the effect that the store building belonged to Huiskamp Brothers; just the words I cannot remember now.

Q. Did you tell him that you owned that store and was in possession of it, or that you had a claim on it?

A. I could not give just what I did say; it was to the effect, however, that Huiskamp Bros. had possession.

Q. Do you know how your goods were shipped to Rummel?

A. By what road?

Q. No; in what name?

A. They were shipped to J. Rummel and Son.

Q. To J. Rummel and Son?

A. Yes, sir.

Q. And charged so on your books?

A. Yes, sir; the account has never been changed.

Q. Now, Mr. Huiskamp, have you stated all that Mr. Rummel told you in regard to that dissolution; did he tell you that it was

an absolute dissolution, or that they had agreed to dissolve at some future time?

A. I think he said it was an absolute dissolution.

Q. Did you not in answer to a question from the court when you were testifying here before, say I knew that for the entire time that the business was done in the name of J. Rummel and Son—

121 I knew we had no right to make such a charge; I understood from Mr. Rummel the name was to be kept up until the debts were paid, and we were never notified that the debts were paid; we were authorized by Mr. Rummel to charge to J. Rummel and Son, and that authority was never to my knowledge revoked; did you not answer the question in that way?

A. I don't remember it.

Q. Think and see if that is not the fact that Rummel had told you that they had not dissolved; had told you that they were to go on using the firm name, each of them to use the firm name until the debts were paid, and that you were still to charge for the goods in the firm name because they had not notified you?

A. Yes, sir; we always charged them in the firm name.

Q. Is that the reason that you urged there; did you not state then, in answer to a question that the judge asked you last term, and was it not a fact?

A. I don't know.

Q. Was it not a fact that the reason that you kept up that way of charging that they had never notified you?

A. Yes, sir; that is one reason.

Q. So then Mr. Rummel did tell you that the firm name was to go on until their debts were paid?

A. Perhaps he did.

Q. Have you no recollection about that, Mr. Huiskamp?

A. No distinct recollection, sir.

Q. And you don't know whether you testified here at the former trial that that was the fact or not?

A. No, sir; I don't.

Q. Do you remember the court asking you questions in regard to it?

A. I remember the court asking me some questions.

122 Q. What were they?

A. Whether it was this question or not I can't say; I don't remember.

Q. I will get you to tell what the fact was; did Rummel tell you that the firm name was to be kept up and used, after the time you had that conversation with him, until the debts were paid, or until some future time, or did he not?

A. I have no recollection of a conversation of that kind.

Q. You recollect a conversation in which you say that Rummel told you that the firm was dissolved?

A. Yes, sir.

Q. And you talked with Cutler afterwards, and he said he was out of the store; now I ask you if, when you testified as to that before, you did not say that Rummel told you that they were going on using

the firm name until the debts were paid; I ask you if you did not testify to that in answer to that question from the court?

A. I have no recollection of it.

Q. Was it a fact?

A. I have no recollection of it.

Q. Was it a fact that they were going on using the firm name until the debts were paid?

A. As far as our house was concerned we never change the name. There was no special arrangement made in regard to it.

Q. Was the reason that you stated there, that you were never authorized to change it, — that the firm debts were not paid?

A. We got no authorization to change it, nor had been requested to change it.

123 Q. Although you had been notified of the dissolution between these parties, you were authorized to still charge them in the firm name until the debts were paid?

A. If we were notified that they were still——

Q. Did you not so state that Rummel told you that they were to use the firm name until the debts were paid?

A. At the present — I have no recollection of that; it may have been the conversation though.

Q. It may have been a conversation between you and Rummel. Was Rummel and Son owing you anything?

A. Rummel and Son?

Q. Yes, sir.

A. No, sir; Rummel and Son owed us nothing.

Q. Then you have taken Mr. Rummel's individual note for it?

A. We have taken Mr. Rummel's individual note for it.

Q. What sign was there up on this store when you went there?

A. J. Rummel & Son.

Q. Did you put up any sign giving any notice of your possession?

A. No, sir; I did not.

Q. Have you told all that you did when you went into that store? You cleaned up the goods; the clerks and you moved them forwards; you hired the clerks and you went on selling the goods. Is that all that you did?

A. I think so.

Q. Then you did not take an inventory, did you?

A. No, sir.

Q. Does your house take Bradstreet's reports?

A. No, sir; we do not.

Q. You just went with the stock of goods as though it was your own, without taking any invoice?

A. Yes, sir.

124 Redirect examination by Mr. HAGERMAN:

Q. Mr. Huiskamp, when you sold these goods to Mr. Rummel did you have any knowledge that the firm then existed?

A. After what time?

Q. The goods mentioned in this bill after January, '79?

A. No, sir.

Q. You say you did not?

A. I did not know that the firm of Rummel and Son existed at that time. .I did not know that the firm of Rummel and Son existed after that time.

Q. In selling the goods you acted upon the information that you received from Mr. Rummel and Mr. Cutler?

A. Yes, sir.

Q. Did you understand at the time you sold the goods for which this note was given to you that Rummel owned the goods and the store?

A. That was my understanding.

Q. You had sold him the goods, then, on which this claim is based with that understanding?

A. Yes, sir.

Q. When you accepted Mr. Rummel's note and the mortgage executed by him you then understood that he owned the goods?

A. Yes, sir.

Q. You got the information which led you to that conclusion from Mr. Rummel & Mr. Cutler?

A. Yes, sir.

Q. You then understood that he owned that stock of goods in that building—the dry goods?

A. Yes, sir; at that time.

125 Q. At the time that you accepted the notes and accepted the mortgage after it had been executed, had you been informed that there was a claim that Rummel and Cutler were in partnership at that time; did you know of any claim that Rummel and Son were in partnership?

A. No, sir; I did not until after I got up to Unionville on the 4th or 5th of January.

Q. You never heard of it then from either of them?

A. Neither.

Q. What knowledge had you from either Rummel or Cutler when you went there to Unionville on the 5th of Jan. that there was a partnership?

A. I had no knowledge.

Q. What information did you have from either of them that they claimed there was a partnership?

A. None, sir.

Q. What was the arrangements, if any, as to my return to Unionville at the time I left—prior to the time I left?

A. I did not hear the question, Captain.

Q. What was the arrangement as to my return to Unionville when I left?

A. You were to return the following day, or as soon as you possibly could get away from some important case. You had some important business matter.

Q. What do you say as to waiting there until I returned to advise you?

A. I was to wait until you returned.

Q. What do you say as to my business consuming more time than I anticipated when I left?

A. It was greater than you anticipated.

Q. When you say that you have no claim against Rummel
126 and Son, that your claim is against Mr. Rummel, do you refer to the notes or to the legal status of the case?

A. I refer to the notes.

Q. If you had had any knowledge that Rummel and Son were in partnership and owned this property, what do you say as to having taken the separate obligation of Mr. Rummel?

A. I should not have done it, of course.

Q. How many of these goods in value which you had sold to Mr. Rummel *was* in the store when you took possession of it?

(Objected to by plaintiff's counsel as —.)

Q. What was the value of the goods that you had sold Mr. Rummel that *was* in the store when you took possession of it?

(Objected to by plaintiff's counsel. Objection sustained by the court; to which ruling of the court the interpleader's counsel then and there duly excepted.)

That Jacob Rummel, a witness for the interpleaders, on his cross-examination, among other things, testified as follows:

That Thomas M. Fee was the attorney of intervenors, and was present at the time of the taking possession by the interpleaders of the property in controversy, and has been such attorney from that time until the present; that at the time of the trial of the plea in abatement of Rummel said Fee was the attorney of Rummel, and was employed by Rummel to assist, and did assist, in the trial of such plea in abatement.

127 The plaintiffs offered testimony, which was admitted in evidence, tending to show that the interpleaders took the mortgage on and possession of the stock of merchandise in controversy, not in good faith, but to assist the defendant Cutler in hindering, delaying, and defrauding his creditors and the creditors of the firm of Rummel and Son; that there was no dissolution of the firm or division of the firm property in January, 1878, or afterwards; that Jacob Rummel made the transfer and conveyance to interpleaders with the intent to hinder, delay, and defraud his creditors; that plaintiffs were engaged in the manufacture and sale of wagons, and had been for many years and had prior to January, 1878, dealt with Rummel & Son, and continued to deal with them after that time; that they never knew of the dissolution of said firm or division of its property, and there never was any published notice of such dissolution; that the debt on which they brought suit in the attachment proceedings was contracted on their part under the belief that the firm of Rummel & Son was still in existence.

The plaintiffs offered in evidence the affidavit for attachment in the main case of the plaintiffs against the defendants, in words and figures as follows, to wit:

At the same time, to wit, January 8, 1880, there was also filed

with the clerk of the circuit court, on the part of said plaintiff, an affidavit, in words and figures following, to wit:

In Putnam Circuit Court. March Term, 1880.

128 THE MOLINE WAGON COMPANY, Pl'ff,
against
JACOB RUMMEL and E. CUTLER, Def'ts.

This affiant states that the plaintiff in the above-entitled cause has a just demand against the defendants therein, now due, except one note for sixteen hundred and ninety-two dollars and eleven cents, due February 16, 1880, and one note for sixteen hundred and fifty dollars, due March 15, 1880, and that the amount which affiant believes the plaintiff ought to recover, after allowing all just credits and set-offs, is sixty-seven hundred and twenty-two dollars and sixty-one cents, and that this affiant has good reason to believe, and does believe, that the defendants have fraudulently conveyed or assigned their property or effects so as to hinder and delay their creditors; that the defendants have fraudulently concealed, removed, or disposed of their property or effects so as to hinder and delay their creditors; that defendants are about fraudulently to convey or assign their property or effects so as to hinder or delay their creditors.

N. S. KETCHUM.

Subscribed and sworn to before me this 8th day of January, 1880.
PETER GREGGERS, *Clerk.*

And also the plea in abatement of Jacob Rummel thereto, in words and figures as follows, to wit:

129 In the Circuit Court of the United States for the Western Division of the Western District of Missouri, May Term, 1880.

THE MOLINE WAGON COMPANY, Plaintiff,
against
JACOB RUMMEL and E. R. CUTLER, Defendants.

Comes now Jacob Rummel, one of the above-named defendants, and files this his separate plea in the nature of a plea in abatement, and, for his said plea, states that he is one of the defendants in this cause, and that he denies that plaintiffs have a just demand against this defendant.

This defendant denies that he has fraudulently concealed, removed, or disposed of his property or effects so as to hinder or delay his creditors.

This defendant denies that he is about fraudulently to convey or assign his property or effects so as to hinder or delay his creditors; therefore this defendant prays that the attachment in this cause abate, and the property heretofore attached be released, and for all proper relief.

JACOB RUMMEL.

Jacob Rummel, one of the defendants herein, makes oath and says that the statements and facts of the foregoing plea in abatement are true, according to his best knowledge and belief.

J. RUMMEL.

130 Subscribed and sworn to before me. Witness my hand and notarial seal this 19th day of April, 1880.

My commission expires on the 17th day of April, 1881.

[SEAL.] A. D. CHRISTY,
Notary Public.

And also that part of the record in said attachment suit showing the proceedings on the trial of the plea in abatement, including the verdict and judgment, in words and figures as follows:

MOLINE WAGON COMPANY *against* JACOB RUMMEL *et al.*

This day come the parties, by their attorneys—the plaintiff by James J. Parks and Gage & Ladd, and the defendants by Fee, Barnett and Dobson—and the plea in abatement of the defendant, Jacob Rummel, being duly called for trial, it is ordered that a jury come, to wit, Moses Shoemaker, R. R. Thompson, John M. Walker, William Erskine, J. Q. Thompson, James S. Taylor, Frank Meyers, Thomas Anderson, Samuel Marshall, William P. Fisher, James W. Rogers, David Young, twelve good and lawful men, who were duly sworn to well and truly try the issues joined on the plea in abatement in the above cause, and thereupon evidence is heard, and, not being completed at the hour of adjournment, it is ordered that further proceedings be postponed until to-morrow morning.

Said entry is of date November 9th, 1880; and afterwards,
131 on the 13th day of November, 1880, the following entry appears of record, to wit:

MOLINE WAGON CO. *against* JACOB RUMMEL *et al.*

This day come the parties again, by their attorneys, and the jury as on yesterday, and thereupon the cause is argued by counsel and submitted to the jury under the charge of the court; whereupon the jury retire to consider what verdict they shall render in the premises, and, after due consultation, the jury return into court the following verdict, to wit:

"We, the jury, find the issues for the plaintiffs.

"M. SHOEMAKER, *Foreman.*"

It is therefore considered by the court that the plea in abatement herein to the attachment be overruled and the attachment sustained.

The interpleaders objected to the introduction of said affidavit, plea in abatement, record entries, verdict, and judgment upon the grounds that thay were not parties to the trial and issue arising upon the plea in abatement, and that the issues tried thereon were entirely separate and distinct from the issues upon trial here, and

hence the testimony is irrelevant and immaterial, relating to different parties and different subject-matter.

The court overruled the objections of the interpleaders and admitted said papers for one purpose, to show that the conveyance and transfer of the stock of merchandise in controversy to the interpleaders was fraudulent on the part of Jacob Rummel; to which action of the court in overruling said objections and admitting
132 said testimony the interpleaders at the time excepted.

This was all of the testimony proving or tending to prove the facts material to the proper understanding of the exceptions of the interpleaders.

The jury having returned a verdict for the plaintiffs, the interpleaders at the time excepted to such verdict, and the court having rendered a judgment on said verdict in favor of the plaintiffs and against the intervenors, the interpleaders at the time excepted to such judgment.

Before the submission of the issues in this trial to the jury, and within the time prescribed by the rules of this court, the interpleaders requested the court to give the following instruction-:

The interpleaders move the court to instruct the jury as follows:

"1. The issue to be tried by the jury in this case arises upon the interpleader of Huiskamp Brothers and the answer thereto. The interpleaders allege that they are the owners of and entitled to the possession of the fund in court derived from the sale of the stock of goods levied upon under the writ of attachment issued in the main case of The Moline Wagon Company against Jacob Rummel and E. R. Cutler. This allegation is denied by the answer to the interplea."

The court refused to give said instruction, and to the action of the court in refusing to give said instruction the interpleaders at the time excepted.

133 And also at the same time intervenors requested the court to give the following instruction:

"2. If Rummel owned the goods and made and delivered the mortgage to Huiskamp Brothers to secure debts which he justly owed, then the presumption is that the mortgage was not frudulent, for the law does not presume fraud."

The court refused to give such instruction, and to that action of the court the intervenors at the time excepted.

And also at the same time intervenors requested the court to give the following instruction:

"3. If the jury find from the evidence that Rummel and Cutler lead Huiskamp Brothers to believe that the goods belonged to Rummel, and they accepted the mortgage and took the goods under such belief, then they are entitled to the same rights by virtue of the mortgage and their possession as if the goods actually belonged to Rummel at the time the mortgage was made and when they took possession of the goods."

The court refused to give such instruction, and to the action of the court in refusing to give such instruction the intervenors at the the time excepted.

And also at the same time the intervenors requested the court to give the following instruction:

"4. If the jury find that as between Rummel and Cutler that the goods belonged to Rummel at the time he made the mortgage
134 and Huiskamp Brothers took possession of the same, then the interpleaders are entitled to recover, although, as to the plaintiffs in this case, the firm of Rummel and Son was in existence, by reason of the fact that the plaintiffs had never been notified of any change of the firm of Rummel and Son. In such case Rummel and Son would be liable to the plaintiffs, but the plaintiffs would have no lien on the stock of goods, and Huiskamp Brothers could acquire title thereto by a valid mortgage from Rummel."

The court refused to give such instruction, and to the action of the court the intervenors at the time excepted.

And also at the same time intervenors requested the court to give the following instruction:

"5. There is a difference between the dissolution of a firm and the settlement of the accounts of the partners between themselves and the firm. A partnership may be dissolved and the property divided in part, leaving the settlement of the accounts between the partners to be effected in the future; and in this case if the firm of Rummel and Son was dissolved in 1879, and Rummel took the stock of merchandise, with the consent of his copartner, and was to be charged therewith, then from that time, as between Rummel and Cutler, the former would be the owner of the goods, and could make a valid mortgage of the same in his own name."

The court refused to give such instruction, and to the action of the court the intervenors at the time excepted.

135 And also, at the same time, intervenors requested the court to instruct the jury as follows:

"6. If the firm of Rummel and Son was not, in fact, dissolved, yet, if Huiskamp Brothers had been told and believed that it had been dissolved, then, as to Huiskamp Brothers, Cutler was a dormant partner; and if Rummel gave a mortgage to Huiskamp Brothers in his own name as the ostensible partner, then the mortgage is as valid as if Rummel had made it in the name of Rummel and Son, which he would have had legal authority to do."

The court refused to give such instruction, and to the action of the court the intervenors at the time excepted.

And also, at the same time, the intervenors requested the court to instruct the jury as follows:

"7. The test of a partnership as between the partners is the sharing of the profits and the losses of the business; and in this case if, after January 18th, 1878, Cutler was not to share the profits and losses of the store business, but Rummel alone was to have such profits and bear such losses, then after that time as between themselves they were not partners in fact. If they should lead others to believe that they were partners, then they would be liable to whoever acted on such belief and gave them credit. Such creditors would not, however, have a lien on the property belonging to one of the partners as be-

tween themselves, and could not claim the same from a party who, in good faith for value, took such property from the partner really owning it."

136 The court refused to give such instruction, and to the action of the court the intervenors at the time excepted.

And also, at the same time, the intervenors requested the court to give the following instruction:

"8. The act of Rummel in making the mortgage and surrendering the possession of the stock of goods to Huiskamp Brothers in his own name was the representation that he had authority to convey the title to them in that name, and if their debts were, in fact, the debts of the firm, though unknown to them to be such, then the representation of Rummel was the representation of the firm, and Huiskamp Brothers have the same rights as if the mortgage had been signed in the firm name, or the delivery of the goods had been made by both of the partners."

The court refused to give such instruction, and to the action of the court the intervenors at the time excepted.

And also, at the same time, the intervenors requested the court to give the following instruction:

"9. The court instructs the jury that they cannot consider the record evidence, namely, the affidavit in attachment, the plea in abatement, and the verdict and judgment, and the same is withdrawn from their consideration."

And at the time of the final submission of the issues joined herein to the jury the court, on its motion, instructed the jury in a written charge in words and figures as follows, to wit:

137 UNITED STATES OF AMERICA, } *sct:*
Western District of Missouri, }

In the Circuit Court of the United States for the Western Division of said District. October Term, A. D. 1882.

MOLINE WAGON COMPANY *against* JACOB RUMMEL *et al.*

In the matter of the interplea of Huiskamp Brothers, Krekel, judge, charged the jury as follows:

The Moline Wagon Company, an Illinois corporation, sued Rummel and Cutler, in their firm name of Rummel & Son, in the circuit court of Putnam county, Missouri, on four notes and an account, and in aid of their suit obtained an attachment. Under this attachment the property in controversy—a stock of merchandise—was seized and sold, and the proceeds of this sale, now in court, is the matter in dispute. In the attachment suit between the Moline Wagon Company and Rummel and Cutler, Rummel filed what in law is termed a plea in abatement; that is, he denied the facts alleged in the affidavit made by the company to obtain the attachment. The law allows attachments to issue and property to be

seized in cases only where debtors have dealt or are about to deal with their property in an illegal way. The affidavit made by the Moline Wagon Company at the time they sued out their attachment in appropriate legal language charged that Rummel and Cutler had or were about fraudulently to convey their property so as to hinder and delay their creditors in the collection of their debts. This
138 charge Rummel denied. A trial which was had on this issue resulted in the sustaining of the attachment; that is, the charge made in the affidavit by the Moline Wagon Company that Rummel had fraudulently conveyed, or was about fraudulently to convey, the property in controversy to hinder and delay creditors *were* true. Cutler, the defendant with Rummel in the attachment suit, did not appear, and thereby confessed the charge of fraud.

While this controversy was going on Huiskamp Brothers, a firm in Keokuk, Iowa, filed their interplea in the case, alleging that the property in controversy was theirs, claiming title thereto in two ways: first, by the mortgage which had been read in evidence, and, next, by obtaining actual possession of the property. The question, therefore, is shall the Moline Wagon Company hold the property under the attachment or shall it be adjudged the property of Huiskamp Brothers, and this is the issue you are to determine under the evidence and the law as given you by the court.

Both the Moline Wagon Company and Huiskamp Brothers claim the property as property of Rummel and Cutler, the Huiskamp Brothers, in one view they take of their case, asserting that it was the individual property of Rummel. It is an undisputed fact that up to January, 1878, Rummel and Cutler, under the firm name of Rummel & Son, carried on partnership business, in which the partners were equally interested. It is claimed by Huiskamp Brothers that in January, 1878, a dissolution of the partnership of Rummel & Son took place, and that thereafter each partner, under the division of the property made, held property in their individual rights only. It is true, and you are instructed, that if you shall find from the
139 testimony that a division of property between the partners took place and that therefore the property was held separated by each partner as individual property, and not as the property of the firm, then each partner could deal with his own property as he chose; could convey or mortgage the same and deliver possession thereof to any one without creditors of the firm having a right to complain. But if no legal dissolution of the partnership took place in January, 1878, or since, and the partners continued to hold the property in controversy as partnership property, bought, sold, and advertised it as firm property, such property remained partnership property, so far as creditors are concerned, who knew nothing of the division, and who trusted the firm. Under the view of the case last presented you will have to determine whether there was a dissolution of the partnership. As already stated, it is an undisputed fact that up to January, 1878, a partnership between Rummel and Cutler did exist; that that partnership dealt in general merchandise, including farming implements, wagons, etc., and that dealings prior to that time were had between the Moline Wagon Company and the firm of

Rummel and Son. The Moline Wagon Company had a right to presume that the persons once composing a firm and who continued doing business under the firm name are still partners, and that the partnership continues to exist until notice of a dissolution was given. No agreement or understanding between the partners—no division of the property of the firm—can relieve either the firm or the partners of their legal liability as to creditors who extend credit to the firm, nor are creditors who extend credit to the firm bound to regard public rumors, even if they heard them, if the partners continue the partnership name and avail themselves of the partnership credit. You are therefore instructed that the
140 partnership between Rummel and Cutler in 1878 continued to exist up to the time of the creation of the debts sued on by the Moline Wagon Company, unless public notice of the dissolution of the partnership was given or actual notice of such dissolution was brought home to the Moline Wagon Company. If, under this view of the law, you shall find from the evidence that plaintiff, the Moline Wagon Company, gave credit to the firm of Rummel and Son, composed of Rummel and Cutler, then the firm and each of the partners are liable for the debt thus contracted. All of the assets of the partnership, *both* merchandise, notes, and accounts, as well as all wages and property of the partnership which Cutler may have handled in his division of the partnership, as well as all notes and accounts which Cutler may have taken, together with all property of the partners, in case of insufficiency of partnership assets, are liable for debts created by the partnership. If you shall find that the partnership once existing between Rummel and Cutler had not been dissolved, and the property in dispute to be partnership property, then Rummel could not take such partnership property and pay an individual debt with it, such as Huiskamp Brothers claim to have, and the mortgage read in evidence given them is void as against creditors of the firm.

We now come to the inquiry as to the good faith of the parties to the mortgage in making it. This becomes important in case you shall find from the evidence that the debt of the Moline Wagon Company was a partnership debt, for in that case the Moline Wagon Company, as creditors of both Rummel and Cutler, had a right to inquire how Rummel dealt with his individual as well as partnership prop-
141 erty. Under the law partnership property is the first or original fund out of which partnership debts are paid, but the individual property of partners is also liable for the debts of the partnership, so that Rummel must honestly deal with either. A debtor in Missouri has a right under the limitations of its laws to pay, secure, or prefer one creditor over another, and in honestly doing so he commits no fraud on his creditors. Rummel had a right to prefer Huiskamp and make the mortgage to secure an individual debt and out of his individual property, but the transaction must be an honest one and not done to defraud, hinder, or delay his creditors. So far as the intent to defraud, hinder, and delay creditors on part of Rummel is concerned a trial of that issue has been had in this court, with the result brought to your notice by reading from the records.

The intention of Rummel in making the mortgage to Huiskamp Brothers was found to have been fraudulent, but this of itself is not sufficient to make the mortgage fraudulent as to Huiskamp Brothers. Huiskamp Brothers may have known when they accepted the mortgage from Rummel that he intended to defraud, hinder, and delay his creditors by it; yet, if they in no way participated in the fraud of Rummel, did no act to aid or assist him in the illegal act, and intended to secure their debt only, the mortgage as to them is valid, and they are entitled to the benefit of the same; but, on the other hand, if aside from the securing of their own debt Huiskamp Brothers by and through the mortgage undertook to aid and assist Rummel in his fraudulent purposes to hinder and delay the Moline Wagon Company or any other creditor in the collection of their debt, in such case the mortgage is void and they can claim nothing under it as against creditors. This is the important question
142 in the case, and you should carefully examine the whole of the testimony bearing upon this point.

Attention should be given to dates of the various occurrences and in the presence of the attorneys, subject to their correction, and to aid you I recall some of them.

The two notes of the Moline Wagon Company first becoming due, amounting to three thousand three hundred and twenty-eight dollars, became due on the first of January, 1880. The mortgage is made on the day these notes became due, but is dated back to the twenty-fourth of December, 1879. Cutler on the twenty-seventh of December, 1879, mortgaged his property. The value of the property mortgaged as compared with the debt to be secured thereby, the release of the notes and accounts and delivery of them by Huiskamp Brothers to Rummel, the provisions of the mortgage for a public sale, and the taking of possession by Huiskamp Brothers and selling at retail should be called to mind with the rest of [the] testimony, and the whole judged of under the caution enjoined by the judgment which determined that Rummel had acted fraudulently in making the mortgage. In dealing with Rummel under these circumstances Huiskamp Brothers must exercise the utmost good faith, and their failing to do so deprives them of any right under the mortgage. What is said of the mortgage applied with equal force to the taking of possession of the goods. Huiskamp Brothers had a right to take possession of the goods in controversy to satisfy their claim if they were the individual property of Rummel, and Rummel consented thereto, but the taking of such possession must have been in good faith and for the purpose of satisfying their debt, and not to aid Rummel in carying out his fraudulent purposes.

143 As already stated if, under the facts of the case and the law applicable thereto as given you, you find the goods to have been the goods of the partnership and not the individual property of Rummel, he could neither mortgage them nor deliver possession of them to pay an individual debt.

If, under the testimony and the law as given you by the court, you find the issue for the interpleaders, you will say so in your verdict. If, on the other hand, you find the issue against the inter-

pleaders and that the property is subject to the attachment, you will state that in your verdict.

JAMES HAGERMAN, Keokuk, Iowa,
TANNEHILL & FEE, Centerville, Iowa,
For the Interpleaders.
JAMES J. PARKS, Rock Island, Ill.,
GAGE & LADD, Kansas City, Mo.,
For the Plaintiffs.

To the following portions of said charge of the court, to wit—

"In the attachment suit between the Moline Wagon Company and Rummel and Cutler, Rummel filed what in law is termed a plea in abatement—that is, he denied the facts alleged in the affidavit made by the company to obtain the attachment. The law allows attachments to issue and property to be seized in cases only where debtors have dealt or are about to deal with their property in an illegal way. The affidavit made by the Moline Wagon Company at the time they sued out their attachment, in appropriate legal
144 language, charged that Rummel and Cutler had or were about fraudulently to convey their property so as to hinder and delay their creditors in the collection of their debts. This charge Rummel denied. A trial which was had on this issue resulted in the sustaining of the attachment—that is, the charge made in the affidavit by the Moline Wagon Company that Rummel had fraudulently conveyed, or was about fraudulently to convey, the property in controversy to hinder and delay creditors *were* true. Cutler, the defendant with Rummel in the attachment suit, did not appear, and thereby confessed the charges of fraud"—

The intervenors at the time excepted on the ground that the same is contrary to law, and the proceedings on Rummel's plea in abatement or Cutler's confession of the charge of fraud in the affidavit can in no way affect the rights of the intervenors.

To the following portions of said charge, to wit—

"So far as the intent to hinder, delay, and defraud creditors on part of Rummel is concerned, a trial of that issue has been had in this court, with the result brought to your notice by reading the records. The intention of Rummel in making the mortgage to Huiskamp Brothers was found to have been fraudulent"—

The intervenors at the time excepted on the ground that the same is contrary to law, and the judgment against Rummel on the plea in abatement could not affect the rights of intervenors, and could not be used against them as evidence proving Rummel's fraud, and especially could not be used as conclusive evidence of Rummel's fraud.

145 To the following portions of the said charge of the court, to wit—

"The value of the property mortgaged as compared with the debt to be secured thereby, the release of the notes and accounts and delivery of them by Huiskamp Brothers to Rummel, the provisions of the mortgage for a public sale, and the taking of possession by Huiskamp Brothers and selling at retail should be called to mind with

the rest of testimony, and the whole judged of under the caution enjoined by the judgment which determined that Rummel had acted fraudulently in making the mortgage. In dealing with Rummel under these circumstances Huiskamp Brothers must exercise the utmost good faith, and their failing to do so deprives them of any right under the mortgage. What is said of the mortgage applies with equal force to the taking of possession of the goods"—

The intervenors at the time excepted, on the ground because the law is erroneously stated, and that it gives effect to the judgment on the plea in abatement, not only as establishing Rummel's fraud, but as tending to affect the question of the intent with which intervenors received the conveyance and transfer of the goods, and, further, because it says that intervenors under the circumstances were to exercise the utmost good faith, and seeks to raise a presumption of fraud against them.

To the following portions of the charge of the court, to wit—

"But if no legal dissolution of the partnership took place in
146 January, 1878, or since, and the partners continued to hold the property in controversy as partnership property, bought, sold, and advertised it as firm property, such property remained partnership property so far as creditors are concerned who knew nothing of the division and who trusted the firm. Under the view of the case last presented you will have to determine whether there was a dissolution of the partnership. As already stated it is an undisputed fact that up to January, 1878, a partnership between Rummel and Cutler did exist; that that partnership dealt in general merchandise, including farming implements, wagons, etc., and that dealings prior to that time were had between the Moline Wagon Company and the firm of Rummel and Son. The Moline Wagon Company had a right to presume that the persons once composing a firm and who continue doing business under the firm name are still partners, and that the partnership continues to exist until notice of a dissolution was given. No agreement or understanding between the partners—no division of the property of the firm—can relieve either the firm or the partners of their legal liability as to creditors who extend credit to the firm, nor are creditors who extend credit to the firm bound to regard public rumors, even if they heard them, if the partners continue the partnership name and avail themselves of the partnership credit. You are therefore instructed that the partnership between Rummel and Cutler existing in 1878 continued to exist up to the time of the creation of the debts sued on by the Moline Wagon Company, unless public notice of the dissolution of the partnership was given or actual notice of such dissolution was brought home to the Moline Wagon Company. If, under this view of the law, you shall find from the evidence that plaintiff, the Moline
Wagon Company, gave credit to the firm of Rummel & Son, com-
147 posed of Rummel and Cutler, then the firm and each of the partners are liable for the debt thus contracted. All of the assets of the partnership, *both* merchandise, notes, and accounts, as well as all wages and property of the partnership which Cutler may have handled in his division of the partnership, as well as all notes

and accounts which Cutler may have taken, together with all property of the partners, in case of insufficiency of partnership assets, are liable for debts created by the partnership. If you shall find that the partnership once existing between Rummel and Cutler had not been dissolved and the property in dispute to be partnership property, then Rummel could not take such partnership property and pay an individual debt with it, such as Huiskamp Brothers claim to have, and the mortgage read in evidence given them is void as against creditors of the firm "—

The intervenors at the time excepted on the ground that the same was contrary to law, and because these portions of the charge assume that the plaintiffs had a lien upon the property prior to the levy under the writ, and because the same ignores the rights of intervenors, and because the case is made to turn on the fact whether plaintiffs had notice of the dissolution of the firm of Rummel & Son instead of upon the fact whether interpleaders had title to the property in controversy as against Rummel and Rummel and Son at the time of the levy under the writ of attachment.

Now, in memory whereof, these intervenors now present this bill of exceptions, and ask that the same may be signed, sealed, and made part of the record, which is accordingly done, leave
148 having been given at the last term of this court by proper orders of this court and by consent of parties to the intervenors until this time to prepare and present this bill of exceptions.

Witness my hand and seal this 9th day of June, A. D. 1883.

(Signed) A. KREKEL, *Judge.*

The above is correct and may be signed.
June 9th, 1883.

JAMES HAGERMAN,
Of Hagerman, McCrary & Hagerman,
Attorney for Interpleaders.
JAMES J. PARKS,
Of Parks and Pleasants,
Att'ys for Moline Wagon Company.

Said bond for supersedeas is in words and figures as follows, to wit:

Writ of Error from Western Division of Western District of Missouri.

Supreme Court of the United States.

THE MOLINE WAGON COMPANY, a Corporation, Plaintiff,
against
JACOB RUMMEL and E. R. CUTLER, Defendants, and HENRY C. HUISKAMP, Herman J. Huiskamp, and Luke Huiskamp, Partners, under the Firm Name and Style of Huiskamp Bros., Interpleaders.

In the Matter of the Interplea of HUISKAMP BROS.

149 Supersedeas bond.

Know all men by these presents that we, George M. Shelley, E. K. Thornton, and J. S. Chick, of Kansas City, Jackson county, Mis-

souri, are held and firmly bound unto the Moline Wagon Company, a corporation of the State of Illinois, in the sum of fifteen hundred dollars, to be paid to the said company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and signed with our names this 9th day of June, A. D. 1883.

Whereas Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, partners under the firm name and style of Huiskamp Bros., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action on the interplea of said Huiskamp Bros. in the circuit court of the United States for the western division of the western district of Missouri:

Now, therefore, the condition of this obligation is such that if the said Huiskamp Bros. shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

GEO. M. SHELLEY. [SEAL.]
E. K. THORNTON. [SEAL.]
J. S. CHICK. [SEAL.]

App'd: A. KREKEL, *Judge.*

150 UNITED STATES OF AMERICA, } *sct:*
Western Division of the Western District of Missouri, }

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing is a complete and true transcript of the record and proceedings in the case wherein The Moline Wagon Company is plaintiff, Jacob Rummel and E. R. Cutler are defendants, and Huiskamp Brothers are interpleaders, as fully as the same remains on file and of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in the city of Kansas this 16th day of June, A. D. 1883.

{ Seal of the United States Circuit Court for the Western District of Missouri, Western Division. }

H. C. GEISBERG, *Clerk,*
By WARREN WATSON,
Deputy Clerk.

Endorsed on cover: W. Missouri C. C. U. S. No. 194. Henry C. Huiskamp, Herman J. Huiskamp, and Luke Huiskamp, partners as Huiskamp Brothers, interpleaders, plaintiffs in error, *vs.* The Moline Wagon Company. Filed 29th October, 1883.

121-310

IN THE

Supreme Court of the United States

OCTOBER TERM A. D. 1886.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP and LUKE HUISKAMP, Partners as HUISKAMP BROTHERS. Interpleaders,
Plaintiffs in Error.
vs.
THE MOLINE WAGON COMPANY,
Defendant in Error.

No. 194.
Error to the Circuit Court of the United States for the Western District of Missouri.

BRIEF AND ARGUMENT

FOR PLAINTIFFS IN ERROR AGAINST MOTION TO DISMISS WRIT OF ERROR.

JAMES HAGERMAN,
ATTORNEY FOR PLAINTIFFS IN ERROR.

Press of Ramsey, Millett & Hudson, Kansas City.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1886.

HENRY C. HUISKAMP, HERMAM J. HUISKAMP and LUKE HUISKAMP, Partners as HUISKAMP BROTHERS, Interpleaders,
Plaintiffs in Error.

v.

THE MOLINE WAGON COMPANY,
Defendant in Error.

No. 194.

Error to the Circuit Court of the United States for the Western District of Missouri.

BRIEF AND ARGUMENT

FOR PLAINTIFFS IN ERROR AGAINST MOTION TO DISMISS WRIT OF ERROR.

The motion to dismiss is based on a clear misconception of the issues tried and decided by the court below from which this writ of error is prosecuted.

The original interplea sought to recover the goods levied on in the main case of the *Moline Wagon Co. v. Jacob Rummel*, and was filed May 8, 1880, by authority of the following section of the Missouri Statutes:

"Any person claiming property, money effects, or "credits attached, may interplead in the cause, verifying

" the same by affidavit, and issues may be made upon such " interplea, and shall be tried as like issues between plain- " tiff and defendant, and without any unnecessary delay."

Rev. Stats. 1879, Sec. 449.

It alleged that interpleaders were the owners of the goods at the time of the levy, and still owned them, and claimed such goods and had demanded their return. See Record 42. The inventory (Transcript of Record 15 to 41) filed with sheriff's return (pp. 6 and 7) shows the value of the goods when siezed by the sheriff, to have been $6,733.-55. Before the original interplea could be disposed of and on June 21, 1880, the goods were ordered to be sold as perishable property (pp. 44 and 45) under authority of the following section of the Missouri law:

" When property shall be actually seized, which is likely to perish or depreciate in value before the probable termination of the suit, or the keeping of which would be attended with much loss or expense, the court, or judge in vacation, or justice of the peace, may order the same to be sold by the officer having charge of the property, and a return of the proceedings thereon to be made by the officer at a time to be fixed therein, and the sale shall be conducted in like manner, as near as may be, as sales of goods under writs of *fieri facias*."

Rev. Stats. 1879, Sec. 424.

The goods sold for $5,246.60 and the proceeds were brought into court. See Record 52.

On May 17, 1881, the interpleaders filed their amended interplea, which alleged that at the time of the levy the interpleaders were the owners of and in possession of the goods, and that said goods had been wrongfully siezed by the sheriff and taken from them. That the wrongful siezure was made on January 8, 1880; that these goods had been sold and that the proceeds thereof, amounting to

$5,246.50, were in court, and that such proceeds belonged to and were their property, and they were entitled to the possession of the same, and asked judgment therefor. (See Record 46, 47 and 51.)

The Moline Wagon Co. answered the interplea (p. 52) denying each and every allegation therein contained and the case was tried below on the amended interplea and the answer thereto. There was no issue made in the pleadings and no instructions asked by either party as to the amount of the claims of the interpleaders. See instructions asked (Record 81, 82 and 83) and charge of the court to the jury (pp. 83 to 87, 88 and 89). The court in its charge stated explicitly, that:

"Huiskamp Bros., a firm of Keokuk, Iowa, filed their interplea alleging that the property in controversy was theirs, claiming title thereto in two ways: First, by the mortgage, which has been read in evidence; and next, by obtaining actual possession of the property.

"The question therefore is, shall the Moline Wagon Company hold the property under the attachment, or shall it be adjudged the property of Huiskamp Bros., and this is the issue you are to determine under the evidence and the law as given you by the court." (p. 84.)

The jury returned the following verdict:

"We, the jury, find the property attached in this cause and the proceeds thereof were not and are not the property of the interpleaders," (see Record 48) and on that verdict judgment was entered (p. 50).

And in the bill of exceptions (Record 52 and 53) we find the following recital:

"The interpleaders, in support of their title to the property in controversy, offered testimony, which was admitted, tending to prove such title as follows:

"First, a chattel mortgage made by defendant, Jacob Rummel, to the interpleaders on the stock of merchandise, the proceeds of which are in controversy, dated December 24, 1879, and the notes of said Jacob Rummel to said interpleaders secured thereby, of same date, one for $2,500 and one for $1,500, each due one day after date, and bearten per cent from date. Said mortgage was signed and acknowledged in due form and filed for record in the office of the Recorder of Deeds of Putnam County, Missouri, on January 1, 1880. . . . .

"Second, that said stock of merchandise was actually transferred and delivered to the interpleaders on January 6, 1880, prior to the siezure of same under the writ of attachment issued in the case of the plaintiffs against the defendants."

Thus we see that by the issues joined by the pleadings, from the instructions of the court and the verdict of the jury, from the judgment of the court and the bill of exceptions, the question tried was the title of the interpleaders to the property in question, and not the amount or extent of their claims against Rummel.

It is not surprising that the court below and the counsel on both sides assumed that the amount in controversy below exceeded $5,000, and that this case was a proper one for review here. It has been left to new counsel brought into the case to range through the record and claim to have discovered that less than $5,000 was involved.

The above recital from the bill of exceptions shows that the two notes of Rummel to interpleaders were introduced, one for $2,500 and the other for $1,500, each dated December 24, 1879, drawing ten per cent interest from date.

Judgment was rendered June 9, 1883. The two notes and interest at date of judgment amounted to $5,400.

It is claimed that the $1,500 note did not belong to interpleaders, but to other Keokuk creditors. Interpleaders, however, held such note as the assignee or trustee for the other creditors, and were authorized by such creditors to so hold it. Luke Huiskamp says that when he received the notes and the letter telling of the execution of the mortgage, he showed the letter to the other creditors and got a statement of their accounts (Record 57) and they assigned their accounts to interpleaders (pp. 60-67.)

It is further claimed, however, that because the witness, Luke Huiskamp, incidentally stated in his testimony that one of the notes had been given for an excess of $590 (see Record 67) that the amounts due on the notes, principal and interest, at date of judgment did not exceed $5,000, and therefore, as the mortgage debt may not have exceeded $5,000 that there is no jurisdiction to review this case here.

The testimony of this witness was at variance with the presumption of indebtednesss raised by the note, and cannot determine or control the jurisdiction.

The fundamental error in this position is, that it assumes that the amount of the mortgage debt was in controversy when the question at issue was the value of the property.

It is settled beyond controversy in Missouri that the mortgagee of chattels after default is the legal owner of the mortgaged property, and has not only the right of property, but also the right of possession.

Williams v. Rorer, 7 Mo. 556.
Robinson v. Campbell, 8 Mo. 365, 615.
McCandless v. Moore, et. al., 50 Mo. 511.
Lacey v. Gibony, 36 Mo. 320.
Pace v. Pierce, 49 Mo. 393.
Jones v. Mack, 53 Mo. 147.
Bowens v. Benson, 57 Mo. 26.
Jones on Chattel Mortgages, § 427.

And this is in harmony with the settled doctrine elsewhere.

Jones on Chattel Mortgages, § 699.
Butler v. Miller, 1 N. Y. 496.
Anderson v. Hunn, 5 Hun. (N. Y.) 79.
Wood v. Dudley, 8 Vt. 430.
Montgomery v. Kerr, 1 Hill (S. C.) 291.
Brown v. Phillips, 3 Bush (Ky.) 656.
Pickard v. Lowe, 15 Me. 48.
Holmes v. Sprowl, 31 Id. 73.
Brackett v. Ballard, 12 Metc. (Mass.) 308.
Harmon v. Short, 16 Miss, 433.
Stringer v. Davis, 35 Cal. 25.
Merchants Nat. Bank v. McLaughlin, 2 Fed. Rep. 128.

And personal property in the hands of a mortgagee can not be seized on execution or attachment for the mortgagor's debts.

Sexton v. Monks, 16 Mo. 332.
Galen v. Brown, 22 N. Y. 37.
Hall v. Sampson, 35 N. Y. 274.
Eggleson v. Mandy, 4 Mich. 295.
Palmer v. Forbes, 23 Ill. 301.
Worthington v. Hanna, 23 Mich. 530.
King v. Bailey, 8 Mo. 332.
Jones on Chattel Mortgages, § 556.

The rule is compactly and clearly stated in *Jones on Chattel Mortgages*, Section 556.

"After forfeiture there is not left in the mortgagor "such a possessory right or interest as is capable of being "seized and sold under execution against him; and the "rule is the same although the mortgagor be allowed to "remain in possession after the default, for in judgment of

"law he is in posssesion merely by sufferance, and as the "bailee of the mortgagee. It dees not matter that the "value of the property greatly exceeds the amount of the "debt secured; or that the sheriff leaves enough to satisfy "the mortgage. He can not levy after forfeiture.

"If the mortgaged goods be attached or be seized upon "execution while they are in the mortgagor's possession, "the mortgagee may, whenever entitled to possession by "the terms of the mortgage, recover possession from "the officer, just as he might recover possession of the "mortgagor if he had retained possession; or may sue "him for the conversion. (*Jones on Chattel Mortgages*, "p. 442, pp. 557.)"

The only interest in the mortgagor is the bare equity of redemption. This can not be seized or sold. In some states it may be reached by garnishment, and in others by creditors' bill, but nowhere by seizure under levy. There is no authority under the laws of Missouri to authorize such seizure The taking of the property was a violation of the mortgagee's right of property and of possession. The sheriff and attaching creditors were tresspassers, and against them the mortgagee could maintain replevin, detinue or trover. The interplea filed in this case was in every respect analogous to the action of detinue.

Finally, we submit, if the property, the proceeds of which are in question here, was wrongfully taken from the the interpleaders, they were entitled to recover it in specie, and out of the property pay, first, the costs of recovering and preserving the property before applying it to their debt. By the seizure in this case the interpleaders were forced into litigation 250 miles from their home in a court beyond the juri-diction where they lived, and they were entitled to all of the property which had been wrongfully taken from them, and out of this property they were entitled to receive compensation for their extraordinary expenses in recovering it. Any other view would lead to

the grossest injustice. When the property was seized the title and rights of the mortgagees in possession were illegally infringed and the tresspassers can not avail themselves of their own wrong to the prejudice of those against whom they tresspassed.

The mortgagees had the right to hold the whole of the mortgaged property until every dollar of their debt was paid, and to reimburse themselves out of the property for the costs and expenses of its care, preservation and recovery.

This contest is in a court of law, and must stand or fall upon the legal rights of the parties. The interpleaders had the legal title to the property in question and were in the peaceable possession of it, and it was wrested from them without authority of law. They invoked the law to recover it. The property exceeded in value $5,000. We confidently submit that this court can and should review the case.

JAMES HAGERMAN.

Attorney for Huiskamp Brothers, Interpleaders and Plaintiffs in Error.

121-310

SUPREME COURT U.S.
FILED
JAN 14 1887
JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

October Term. 1886.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP AND LUKE HUISKAMP, PARTNERS AS HUISKAMP BROTHERS.

Plaintiffs in Error,

v.

THE MOLINE WAGON COMPANY.

No. 194.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR PLAINTIFFS IN ERROR.

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Attorney for Plaintiffs in Error.

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BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

Huiskamp Brothers, interpleaders in the court below and plaintiffs in error here, seek by this proceeding the reversal of the judgment of the court below in the matter of their interplea in the attachment suit of the Moline Wagon Company, defendant in error here, against Jacob Rummell and Ed Cutler.

The original attachment suit was begun on the 8th of January, 1880, and under the writ of attachment issued therein against said Rummell and Cutler, the goods, wares and merchandise, the proceeds of which are in controversy, were seized and taken from the possession of Huiskamp Brothers. Subsequently, by authority of Section 424 of the Revised Statutes of Missouri of 1879, the stock was sold as perishable property, and the proceeds returned into court.

Prior to the sale of the stock, Huiskamp Brothers filed an interplea claiming to be the owners of and entitled to the possession of the same, and after the sale, on the 7th day of May, 1881, filed an amended interplea, claiming that when the stock was seized the same belonged to them and was in their possession; that the same was wrongfully seized and taken from them, under the writ of attachment, and that they were the owners and entitled to the possession of the proceeds of the sale of the stock.

The Moline Wagon Company answered the amended interplea, denying each and every allegation thereof. The amended interplea and the answer thereto are found on pages 51 and 52 of the printed record. A trial of the interplea was had before a jury and there was a verdict and judgment against interpleaders and for the Moline Plow Company.

The mode of procedure by interplea in an attachment suit where a third party claims the attached property, is authorized by Section 449 of the Revised Statutes of Missouri of 1879, which is in words as follows:

"Any person claiming property, money, effects or credits attached may interplead in the case, verifying the same by affidavit, and issues may be made upon such interplea, and shall be tried as like issues between plaintiff and defendant and without any unnecessary delay."

The following extracts from the bill of exceptions show lucidly and succinctly the testimony introduced at the trial:

"The undisputed evidence established that the original suit of the plaintiffs was brought by attachment against the defendants in the Circuit Court of Putnam County, Missouri, and afterwards by the plaintiffs duly removed to this court on the ground that the plaintiffs were a corporation incorporated under the laws of and citizens of the State of Illinois, and that the defendants were citizens of the State of Missouri; that under the writ of attachment issued from the State court, in said cause, before the removal of said cause to this court, the goods, wares and merchandise, the proceeds of which were in controversy, were seized and taken posession of by the sheriff of Putnam County, Missouri, and after the removal of the cause to this court, sold by the said sheriff, and the proceeds thereof, amounting to $5,246.50, returned into this court.

"The interpleaders, in support of their title to the property in controversy, offered testimony which was admitted, tending to prove such title, as follows:

"First. A chattel mortgage made by defendant, Jacob Rummell, to the interpleaders on the stock of merchandise, the proceeds of which are in controversy, dated December 24, 1879, and the notes of said Jacob Rummell to said interpleaders secured thereby, of same date, one for $2,500 and one for $1,500, each due one day after date, and bearing ten per cent from date. Said mortgage was signed and acknowledged in due form and filed for record in office of the recorder of deeds of Putnam County, Missouri, on January 1, 1880. Said mortgage provided that the mortgagees might sell the mortgaged property at public sale on ten days notice.

"Second. That said stock of merchandise was actually transferred and delivered to the interpleaders on January 6, 1880, prior to the seizure of the same under the writ of attachment issued in the case of the plaintiffs against the defendants.

dissolution of said firm or division of its property, and there was never any published notice of such dissolution; that the debt on which they brought suit in the attachment proceedings was contracted on their part under the belief that the firm of Rummell & Son was still in existence."

At the trial the Moline Wagon Company offered in evidence the proceedings had in the attachment case on the plea in abatement of Jacob Rummell to the affidavit of attachment.

Under the law of Missouri writs of attachment are obtained at the time or after the commencement of the suit by the plaintiff making affidavit specifying one or more statutory causes of attachment and executing a bond

See Secs. 398 to 405 inclusive.

Sec. 438 of the Revised Statutes of Missouri provides for a plea in abatement to the attachment proceedings in words and figures as follows:

"Sec. 438. In all cases where property, effects or credits shall be attached, the defendant may file a plea in the nature of a plea in abatement, verified by affidavit, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out."

If on the trial the plea in abatement is sustained the attachment proceedings are abated, and if overruled the attachment is sustained.

See Sec. 439 Rev. Stat. of Missouri.

The affidavit for attachment alleged three causes:

First, that Rummell and Cutler have fraudulently conveyed or assigned their property or effects so as to hinder and delay their creditors. Second, that they have fraudulently concealed, removed or disposed of their property and effects so as to hinder and delay their creditors. Third, they were about fraudulently to convey or

assign their property or effects so as to hinder or delay their creditors.

Rummell's plea in abatement denied specifically each and all of these causes. A trial was had on the issues joined on the plea in abatement, and on the 13th of November, 1880, the issues were found for the plaintiffs, and in the attachment suit a judgment entered overruling the plea in abatement and sustaining the attachment.

Record 79, 80, 81.

The interpleaders objected to the introduction of these proceedings, including the affidavit, the plea in abatement, record entries, verdict and judgment, upon the grounds that they were not parties to the trial issue arising upon the plea in abatement, and that the issues tried thereon were entirely separate and distinct from the issues upon trial in the interplea proceedings, and that such testimony was irrelevant and immaterial, relating to different parties and different subject matter.

The court overruled the objections and admitted these proceedings for one purpose: to show that the conveyance and transfer of the stock of merchandise in controversy to the interpleaders was fraudulent on the part of Jacob Rummell. To which action of the court the interpleaders at the time saved an exception.

The interpleaders requested the court to give instructions, 1 to 9 inclusive, hereinafter set out, (see assignment of errors *post*) which the court refused to do and exceptions were saved.

KREKEL, JUDGE, Charged the Jury as follows:

The Moline Wagon Company, an Illinois corporation, sued Rummell and Cutler in their firm name of Rummell & Son in the Circuit Court of Putnam County, Missouri, on four notes and an account, and in aid of their suit obtained an attachment. Under this attachment the property

in controversy, a stock of merchandise, was seized and sold and the proceeds of this sale now in Court is the matter in dispute, [In the attachment suit between the Moline Wagon Company and Rummell and Cutler, Rummell filed what in law is termed a plea in abatement; that is, he denied the facts alleged in the affidavit made by the Company to obtain the attachment. The law allows attachments to issue and property to be seized in cases only where debtors have dealt or are about to deal with their property in an illegal way. The affidavit made by the Moline Wagon Company at the time they sued out their attachment, in appropriate legal language charged that Rummell and Cutler had, or were about fraudently to convey their property so as to hinder and delay their creditors in the collection of their debts. This charge Rummell denied. A trial which was had on this issue, resulted in the sustaining of the attachment, that is, the charge made in the affidavit by the Moline Wagon Company that Rummell had fraudently conveyed or was about fraudently to convey the property in controversy, to hinder and delay creditors were true. Cutler, the defendant with Rummell in the attachment suit did not appear and thereby confessed the charge of fraud.]

While this controversy was going on Huiskamp Brothers, a firm in Keokuk, Iowa, filed their interplea in the case, alleging that the property in controversy was theirs, claiming title thereto in two ways, first by the mortgage which has been read in evidence, and next by obtaining actual possesion of the property. The question therefore is shall the Moline Wagon Company hold the property under the attachment, or, shall it be adjudged the property of Huiskamp Brothers, and this is the issue you are to determine under the evidence and the law as given you by the Court.

Both the Moline Wagon Company and Huiskamp Brothers claim the property as property of Rummell and

Cutler; the Huiskamp Brothers, in one view they take of their case asserting, that it was the individual property of Rummell. It is an undisputed fact that up to January, 1878, Rummell and Cutler under the name of Rummell & Son, carried on partnership business in which the partners were equally interested. It is claimed by Huiskamp Brothers that in January, 1878 a dissloution of the partnership of Rummell & Son took place and that thereafter each partner under the division of the property made, held property in their individual rights only. It is true and you are instructed that if you shall find from the testimony that a division of property between the partners took place and that therefore the property was held separated by each partner as individual property, and not as the property of the firm, then each partner could deal with his own property as he chose; could convey or mortgage the same and deliver possession thereof to any one without creditors of the firm having a right to complain. [But if no legal dissolution of the partnership took place in January, 1878, or since, and the partners continued to hold the property in controversy as partnership property, bought, sold and advertised it as firm property, such property remained partnership property so far as creditors are concerned, who knew nothing of the division and who trusted the firm. Under the view of the case last presented you will have to determine whether there was a dissolution of the partnership. As already stated it is an undisputed fact that up to January, 1878, a partnership between Rummell and Cutler did exist; that that partnership dealt in general merchandise including farming implements, wagons, etc., and that dealings prior to that time were had between the Moline Wagon Company and the firm of Rummell & Son. The Moline Wagon Company had a right to presume that the persons once composing a firm and who continue doing business under the firm name are still partners and that the partnership continues to exist until notice of a dissolution was given. No agreement or understanding between the partners, no division of the property of the firm can relieve

either the firm or the partners of their legal liability as to creditors who extend credit to the firm, nor are creditors who extend credit to the firm bound to regard public rumors, even if they hear them, if the partners continue the partnership name and avail themselves of the partnership credit. You are therefore instructd that the partnership between Rummell and Cutler, in 1878, continued to exist up to the time of the creation of the debts sued on by the Moline Wagon Company unless public notice of the dissolution of the partnership was given or actual notice of such dissolution was brought home to the Moline Wagon Company. If, under this view of the law, you shall find from the evidence that plaintiff, the Moline Wagon Company, gave credit to the firm of Rummell & Son, composed of Rummell and Cutler, then the firm and each of the partners are liable for the debt thus contracted. All of the assets of the partnership, both merchandise, notes and accounts, as well as all wages and property of the partnership which Cutler may have handled in his division of the partnership, as well as all notes and accounts which Cutler may have taken, together with all property of the partners, in case of insufficiency of partnership assets, are liable for debts created by the partnership. If you shall find that the partnership once existing between Rummell and Cutler had not been dissolved and the property in dispute to be partnership property, then Rummell could not take such partnership property, and pay an individual debt with it, such as Huiskamp Brothers claim to have, and the mortgage read in evidence given them is void as against creditors of the firm.]

We now come to the inquiry as to the good faith of the parties to the mortgage in making it. This becomes important in case you shall find from the evidence that the debt of the Moline Wagon Company was a partnership debt; for in that case the Moline Wagon Company, as creditors of both Rummell and Cutler, had a right to inquire how Rummell dealt with his individual as well as partnership property. Under the law partnership property is the

first or original fund out of which partnership debts are paid, but the individual property of partners is also liable for the debts of the partnership, so that Rummell must honestly deal with either. A debtor in Missouri has a right under the limitations of its laws, to pay, secure or prefer one creditor over another, and in honestly doing so he commits no fault on his creditors. Rummell had a right to prefer Huiskamp and make the mortgage to secure an individual debt, and out of his individual property, but the transaction must be an honest one and not done to defraud, hinder, or delay his creditors. [So far as the intent to defraud, hinder and delay creditors on part of Rummell is concerned, a trial of that issue had been had in this court with the result brought to your notice by reading from the records. The intention of Rummell in making the mortgage to Huiskamp Brothers was found to have been fraudulent.] but this of itself is not sufficient to make the mortgage fraudulent as to Huiskamp Brothers. Huiskamp Brothers may have known when they accepted the mortgage from Rummell that he intended to defraud, hinder and delay his creditors by it; yet, if they in no way participated in the fraud of Rummell, did no act to aid or assist him in the illegal act, and intended to secure their debt only, the mortgage as to them is valid and they are entitled to the benefit of the same. But, on the other hand, if aside from the securing of their own debt Huiskamp Brothers by and through the mortgage undertook to aid and assist Rummell in his fraudulent purposes to hinder and delay the Moline Wagon Company or any other creditor in the collection of their debt, in such case the mortgage is void and they can claim nothing under it as against creditors. This is the important question in the case and you should carefully examine the whole of the testimony bearing upon this point.

Attention should be given to dates of the various occurrences and in the presence of the attorneys, subject to their correction, and to aid you I recall some of them.

The two notes of the Moline Wagon Company, first becoming due, amounting to three thousand three hundred and twenty-eight dollars, became due on the first of January, 1880. The mortgage is made on the day these notes became due but is dated back to the twenty-fourth of December, 1879. Cutler on the twenty-seventh of December, 1879, mortgaged his property. [The value of the property mortgaged as compared with the debt to be secured thereby, the release of the notes and accounts and delivery of them by Huiskamp Brothers to Rummell, the provisions of the mortgage for a public sale and the taking of possession by Huiskamp Brothers and selling at retail should be called to mind with the rest of testimony and the whole judged of under the caution enjoined by the judgement which determined that Rummell had acted fraudulently in making the mortgage. In dealing with Rummell under these circumstances, Huiskamp Brothers must exercise the utmost good faith, and their failing to do so, deprives them of any right under the mortgage. What is said of the mortgage applies with equal force to the taking of posession of the goods.] Huiskamp Brothers had a right to take possession of the goods in controversy to satisfy their claim if they were the individual property of Rummell and Rummell consented thereto; but the taking of such possession must have been in good faith and for the purpose of satisfying their debt and not to aid Rummell in carrying out his fraudulent purposes.

As already stated, if under the facts of the case and the law applicable thereto as given you, you find the goods to have been the goods of the partnership and not the individual property of Rummell he could neither mortgage them nor deliver posession of them to pay an individual debt.

If under the testimony and the law as given you by the court you find the issue for the interpleaders you will say so in your verdict. If on the other hand, you find the issue against the interpleaders and that the property is

subject to the attachment you will state that in your verdict."

The interpleaders excepted by four exceptions to portions of the charge of the judgment which exceptions are hereinafter set out. See assignment of errors, *post.*

From the foregoing statement it will be observed that the rulings of the court below presented for review here are, first, in admitting certain record evidence of the plea in abatement proceedings, (Record 78, 79, 80), second, in refusing to give certain instructions, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, asked by interpleaders (Record 81, 82, 83), and third, in the charge of the judge to the jury. See exceptions 1, 2, 3, 4, Record 87, 88, 89. See also assignment of errors, *post.*

The propositions for which we contend are:

1st. The court erred in admitting the record of the attachment proceedings in the trial of the plea in abatement, and charging as in exceptions 1, 2, 3, to the charge of the court, and refusing to give instruction No. 9, as requested by the interpleaders, relative thereto.

2nd. In refusing to give instructions, Nos. 1 to 8 inclusive, requested by the interpleaders.

3rd. In that part of the charge covered by exception 4, thereto.

For a more particular specification of errors, see assignment of errors, *post.*

ASSIGNMENT OF ERRORS.

1st. The court below erred in admitting in evidence the record of the proceedings in the matter of the issues joined on the affidavit of attachment and the plea in abatement thereto between the Moline Wagon Company of the one part, and Jacob Rummell of the other part as follows

The evidence admitted was the affidavit of attachment, the plea in abatement of Rummell thereto and the verdict and judgment thereon overruling the plea and sustaining the attachment. (Record 79, 80, 81).

The grounds of objection were that interpleaders were not parties to the trial and issues arising on the plea in abatement and that the issues thereon were separate and distinct from the issues upon trial on the interplea and that the evidence was irrelevant and immaterial relating to different parties and different subject matter.

2d. The court erred in refusing to give instruction No. 1 asked by the interpleaders as follows:

"1. The issue to be tried by the jury in this case arises upon the interplea of Huiskamp Brothers and the answer thereto. The interpleaders allege that they are the owners of, and entitled to the possession of, the fund in court derived from the sale of the stock of goods levied upon under the writ of attachment issued in the main case of the Moline Wagon Company against Jacob Rummell and E. R. Cutler. This allegation is denied by the answer to the interplea."

3d. The court erred in refusing to give instruction No. 2 asked by interpleaders as follows:

"2. If Rummell owned the goods and made and delivered the mortgage to Huiskamp Brothers to secure debts which he justly owed, then the presumption is that the mortgage was not fraudulent, for the law does not presume fraud."

4th. The court erred in refusing to give instruction No. 3 asked by interpleaders as follows:

"3. If the court find from the evidence that Rummell and Cutler led Huiskamp Brothers to believe that the goods belonged to Rummell, and they accepted the mortgage and took the goods under such belief, then they are entitled to the same rights by virtue of the mortgage and

their possesion as if the goods actually belonged to Rummell at the time the mortgage was made and when they took possesion of the goods."

5th. The court erred in refusing to give instruction No. 4 asked for by interpleaders as follows:

"4. If the jury find that as between Rummell and Cutler that the goods belonged to Rummell at the time he made the mortgage and Huiskamp Brothers took possession of the same, then the interpleaders are entitled to recover, although as to the plaintiffs in this case, the firm of Rummell & Son was in existence, by reason of the fact that the plaintiffs had never been notified of any change of the firm of Rummell & Son. In such case Rummell and Son would be liable to the plaintiffs, but the plaintiffs would have no lien on the stock of goods, and Huiskamp Brothers could acquire title thereto by a valid mortgage from Rummell."

6th. The court erred in refusing to give instruction No. 5 asked by interpleaders, as follows:

"5. There is a difference between the dissolution of a firm and the settlement of the accounts of the partners between themselves and the firm. A partnership may be dissolved and the property divided in part, leaving the settlement of the accounts between the partners to be effected in the future; and in this case if the firm of Rummell & Son was dissolved in 1878, and Rummell took the stock of merchandise, with the consent of his co-partner, and was to be charged therewith, then from that time, as between Rummell and Cutler, the former would be the owner of the goods, and could make a valid mortgage of the same in his own name."

7th. The court erred in refusing to give instruction No. 6, asked by interpleaders, as follows:

"6. If the firm of Rummell & Son was not, in fact, dissolved, yet, if Huiskamp Brothers had been told and believed that it had been dissolved, then, as to Huiskamp

"So far as the intent to hinder, delay, and defraud creditors on part of Rummell is concerned, a trial of that issue has been had in this court, with the result brought to your notice by reading the records. The intention of Rummell in making the mortgage to Huiskamp Brothers was found to have been fraudulent.

The interveners at the time excepted on the ground that the same is contrary to law, and the judgment against Rummell on the plea in abatement could not affect the rights of interveners, and could not be used against them as evidence proving Rummell's fraud, and especially could not be used as conclusive evidence of Rummell's fraud.

13th. The court erred in giving that part of the charge to which the third exception of the interpleaders applied, to-wit:

"The value of the property mortgaged as compared with the debt to be secured thereby, the release of the notes and accounts and delivery of them by Huiskamp Brothers to Rummell, the provisions of the mortgage for a public sale, and the taking of possession by Huiskamp Brothers and selling at retail should be called to mind with the rest of testimony, and the whole judged of under the caution enjoined by the judgment which determined that Rummell had acted fraudulently in making the mortgage. In dealing with Rummell under these circumstances Huiskamp Brothers must exercise the utmost good faith, and their failing to do so deprives them of any right under the mortgage. What is said of the mortgage applies with equal force to the taking of possession of the goods."

The interveners excepted at the time, on the ground because the law is erroneously stated, and that it gives effect to the judgment on the plea in abatement, not only as establishing Rummell's fraud, but as tending to affect the question of the intent with which interveners received the conveyance and transfer of the goods, and, further, because it says that interveners under the circumstances

were to exercise the utmost good faith, and seeks to raise a presumption of fraud against them.

14th. The court erred in giving that part of the charge to which the fourth exception of the interpleaders applied, to-wit:

"But if no legal dissolution of the partnership took place in January, 1878, or since, and the partners continued to hold the property in controversy as partnership property, bought, sold, and advertised it as firm property, such property remained partnership property so far as creditors are concerned who knew nothing of the division and who trusted the firm. Under the view of the case last presented you will have to determine whether there was a dissolution of the partnership. As already stated it is an undisputed fact that up to January, 1878, a partnership between Rummell and Cutler did exist; that that partnership dealt in general merchandise, including farming implements, wagons, etc., and that dealings prior to that time were had between the Moline Wagon Company and the firm of Rummell and Son. The Moline Wagon Company had a right to presume that the persons once composing a firm and who continued doing business under the firm name are still partners, and that the partnership continues to exist until notice of a dissolution was given. No agreement or understanding between the partners—no division of the property of the firm can relieve either the firm or the partners of their legal liability as to creditors who extend credit to the firm, nor are creditors who extend credit to the firm bound to regard public rumors, even if they heard them, if the partners continue the partnership name and avail themselves of the partnership credit. You are therefore instructed that the partnership between Rummell and Cutler existing in 1878 continued to exist up to the time of the creation of the debts sued on by the Moline Wagon Company, unless public notice of the dissolution of the partnership was given or actual notice of such dissolution was brought home to the Moline

Wagon Company. If, under this view of the law, you shall find from the evidence that plaintiff, the Moline Wagon Company, gave credit to the firm of Rummell and Son, composed of Rummell and Cutler, then the firm and each of the partners are liable for the debt thus contracted, all of the assets of the partnership, *both* merchandise, notes and accounts, as well as all wages and property of the partnership which Cutler may have handled in his division of the partnership, as well as all notes and accounts which Cutler may have taken, together with all property of the partners in case of insufficiency of partnership assets are liable for debts created by the partnership. If you shall find that the partnership once existing between Rummell and Cutler had not been dissolved and the property in dispute to be partnership property, then Rummell could not take such partnership property and pay an individual debt with it, such as Huiskamp Brothers claim to have, and the mortgage read in evidence given them is void as against creditors of the firm."

"The interveners at the time excepted on the ground that the same was contrary to law, and because these portions of the charge assume that the plaintiffs had a lien upon the property prior to the levy under the writ, and because the same ignores the rights of interveners, and because the case is made to turn on the fact whether plaintiffs had notice of the dissolution of the firm of Rummell & Son instead of upon the fact whether the interpleaders had title to the property in controversy as against Rummell and Rummell & Son at the time of the levy under the writ of attachment."

BRIEF AND ARGUMENT.

I.

The assigned errors, No. 1 as to the admission in evidence of the record of the attachment suit on the plea in abatement proceedings, No. 10 as to the refusal to

give instructions requested by the interpleaders as relative thereto, and Nos. 11, 12 and 13 covering the parts of the charge of the court relative thereto, may all be considered together.

The record in the plea in abatement proceedings shows that there were three causes of attachment alleged: First, that Rummell and Cutler had fraudulently conveyed or assigned their property and effects so as to hinder and delay their creditors; second, that they have fraudulently concealed, removed or disposed of their property and effects so as to hinder and delay their creditors; third, that they are about fraudulently to convey or assign their property or effects so as to hinder or delay their creditors.

There is nothing in the record to show whether one or all of these alleged causes of attachment were tried, or to what act or contemplated act of Rummell or Cutler in disposing of their property they applied.

It is well settled by the law of Missouri, in harmony with the law elsewhere, that two things must concur to have made the mortgage of Rummell to Huiskamp Brothers fraudulent: First, Rummell must have made the mortgage with the fraudulent intent of hindering and delaying his creditors; second, Huiskamp Brothers must have accepted the mortgage with the fraudulent intention of assisting Rummell to defraud his creditors. In other words, a debtor in failing circumstances has the right to prefer a creditor; and although the creditor may know that the debtor is insolvent, and that in making the preference he intends to defraud other creditors, yet, if the preferred creditor has a *bona fide* debt and takes the mortgage with the intent to secure himself, and not with the fraudulent purpose of aiding the debtor to defraud other creditors, then the mortgage is upheld.

The authorities in support of this proposition are abundant:

Shelley v. Booth, 73 Mo. 74.
Forrester v. Moore, 77 Mo. 659.
Colbier v. Robinson, 80 Mo. 546.
Cohn v. Clement, 58 Iowa 589.
Butler v. White, 25 Minn. 432.
Bump's Fraudulent Conveyance, 3d Ed. 582.

It will be observed that the court below admitted the plea in abatement proceedings, ostensibly to prove the fraud on Rummell's part in making the mortgage to Huiskamp Brothers; and yet, the court in its charge assumes that the judgment on the plea in abatement conclusively established Rummell's fraud; and further, was to be considered as bearing upon the question of the alleged fraud of Huiskamp Brothers. And this in the face of the recital in the bill of exceptions that the interpleaders offered evidence tending to show "that they took said mortgage and possession of said stock of merchandise in good faith to secure their debt, and not to hinder, delay or defraud, or to assist in hindering, delaying or defrauding the creditors of said Rummell or Rummell & Son," and, "that Rummell made the conveyance and transfer to the interpleaders in good faith to secure their debt, and not with the fraudulent purpose of hindering, delaying or defrauding his creditors or those of the firm of Rummell & Son." (Record 53.)

We contend that the plea in abatement proceedings were not even *prima facie*, much less conclusive evidence, of Rummell's alleged fraud in making the mortgage. The right of the Moline Wagon Company to contest the mortgage did not depend on a determination of the plea in abatement proceedings. Their right arose by reason of the seizure of the stock under the writ of attachment. Therefore we claim that the record of the plea in abatement proceedings was entirely immaterial in any view of the case. However, if admissible to prove that the right to retain the attached goods as against Rummell had been deter-

mined in favor of the Moline Wagon Company, still it was wholly inadmissible to prove Rummell's fraud in making the mortgage. Huiskamp Brothers were neither parties or privies to the plea in abatement proceedings. They had no right to appear in them, or to control or defend them. Under the fundamental rules of evidence they were inadmissible for the purposes for which the court admitted them, and can not have the effect which the court charged they had.

See Greenleaf on Evidence, Secs. 523, 527, 538, 539.
Wharton on Evidence, Secs. 760, 761.

On this branch of the case we submit (1), the plea in abatement proceedings should not have been admitted; (2), having been erroneously admitted, should have been withdrawn from the consideration of the jury by giving instruction No. 9 requested by interpleaders; (3), the court should not have charged the jury that the effect of this evidence was to establish Rummell's fraud; (4) the court in its charge should not have referred to Cutler's confession of the fraud by not contesting or defending the attachment proceedings as in any way affecting interpleaders' right; and (5) the court should not have charged that Rummell's fraud as proved by this evidence should be considered in determining the alleged fraud of the interpleaders.

II.

The assigned errors Nos. 4, 5, 6 and 8 as to the refusal of the court below to give instructions 3, 4, 5, and 7 requested by interpleaders, and the assigned error No. 14 to that part of the charge to the court set out in the 4th exception to the charge may be considered together.

A careful examination of the instructions refused and of that portion of the charge given and excepted to will show clearly a strong conflict between the view of the court below on the law governing the case and the view contended for by the counsel for interpleaders.

The bill of exceptions shows that the interpleaders introduced evidence "tending to show that they were wholesale dealers in boots and shoes in the city of Keokuk, Lee county, Iowa, and had been for many years. That prior to January, 1878, the defendants, Jacob Rummell & Son were partners engaged in business in the town of Unionville, Putnam county, Missouri, under the firm name of Rummell & Son, and their b isiness was that of general retail merchandise, including farming implements, wagons, etc. That in January, 1878, said partners dissolved said firm and divided the property and business thereof, and both of said partners informed the interpleaders of such dissolution. That after such dissolution the said Jacob Rummell continued at the same place the general retail merchandise business, and the defendant, Ed R. Cutler engaged in the business of selling agricultural implements, including wagons. That after January, 1878, as between themselves the said Rummell had no interest in the profits or losses of the business carried on by Cutler in the agricultural business, and Cutler had no interest in the profits or losses of the merchandise business. That the indebtedness of the ininterpleaders for which the stock of merchandise was mortgaged or pledged was for goods sold to Jacob Rummell after the dissolution and division of the business and property of the firm of Rummell & Son. That when the interpleaders took the mortgage, and also when they took possession of the stock of merchandise, they understood that the same belonged to Jacob Rummell and had been led to so believe from the statements of both Cutler and Rummell."

And the Moline Wagon Company introduced evidence tending to show that they "were engaged in the manufacture and sale of wagons, and had been for many years, and had prior to January, 1878, dealt with Rummell and Son and continued to deal with them after that time. That they never knew of the dissolution of said firm or division of its property, and there never was any

published notice of such dissolution; that the debt on which they brought suit in the attachment proceedings was contracted on their part under the belief that the firm of Rummell & Son was still in existence."

The central idea in the charge of the court covered by the 4th exception, is that although Rummell and Cutler may have actually dissolved their firm in 1878 and divided the firm property, though they may have told Huiskamp Brothers of the dissolution and division of the property, and that Rummell owned the merchandise stock, and although Huiskamp Brothers subsequently sold Rummell goods, and for the debt thus incurred took the mortgage in question, yet, the mortgage was void as to the Moline Wagon Company, unless they were informed of the dissolution of the firm of Rummell & Cutler and the division of the firm property; while the central idea of instructions 3, 4, 5, and 7 requested by interpleaders and refused by the court is, that if Rummell & Cutler had in fact dissolved and divided the property, Rummell taking the merchandise stock, or if Rummell & Cutler led Huiskamp Brothers to believe that the stock of merchandise belonged to Rummell, then Huiskamp Brothers acquired the title by Rummell's mortgage.

In other words, the view of the court below was that the creditors of Rummell & Cutler acquired such an interest in their property simply from the fact of being creditors that a creditor of Rummell, although he might acquire a good title by mortgage as against Rummell & Cutler, could not acquire a good title as against the partnership creditors of Rummell & Cutler. While the view contended for by interpleaders is, that whatever rights Huiskamp Brothers acquired in good faith against Rummell & Cutler actually bound unsecured partnership creditors of Rummell & Cutler.

These conflicting views lead to the inquiry: What interest have partnership creditors in partnership property?

We understand the rule to be that they have no inter-

est at law or in equity; that under certain circumstances when the firm becomes insolvent and has firm property at that time, then each may have the right in equity to have the firm property applied, first, to the payment of the partnership debts before having the interest of any of the partners applied to the payment of their individual debts. The right of the partnership creditors to priority of payment springs from and is worked out through this equitable right of the individual partners. At one time there may have been some question as to the basis of the rule giving priority to partnership creditors. The question has been fully considered and settled by repeated decisions of this court.

See Case against Beauregard, 99 U. S. 119.
Same Case, 119 *et seq.*
Fitzpatrick v. Flannigan, 106 U. S. 648, 652, 655 *et seq.*
McGinty v. Flannigan, 106 U. S. 661.
See also Locke v. Lewis, 124 Mass. 1.
Howe v. Lawrence, 9 Cushing 553.

In Case against Beauregard *ante*, the syllabus states with accuracy the substance of the opinion, and it is:

"A member of the firm assigned and transferred in good faith his interest in the partnership property in payment of a just debt, for which he was solely liable. The creditor took possession of it and sold it to A, who by an act of sale, in which the other members of the firm united, transferred it for a valuable consideration to B. The firm and the members of it were insolvent, and C, claiming to be a simple contract creditor of the firm, then filed his bill to subject the property to the payment of his debt. Held, that C had no specific lien on the property, and there being no trust which a court of equity can enforce, the bill can not be sustained."

The result of the doctrine established in the case just cited is applicable to the case at bar. At the time Huis-

kamp Brothers took their mortgage the Moline Wagon Company had no lien upon the mortgaged property either at law or in equity. That the sole and exclusive proprietary interest therein was either in Rummell or Rummell and Cutler, and as Huiskamp Brothers acquired by a good *bona fide* mortgage title to the mortgage property as against Rummell or Rummell and Cutler, they can hold it as against the Moline Wagon Company.

In Fitzpatrick v. Flannigan *ante*, the court held that where a firm is dissolved by the death of one of its members, and no bill is filed by his representatives or by the firm creditors seeking the intervention of a court of equity to wind up the business of the firm, marshal its assets and apply them to the firm debts, the surviving partner may by paying his individual indebtedness with those assets make a disposition of them which is not a fraud in law upon the firm creditors. And in this case the court quotes with approval the language used in the case of Beauregard, as follow: "If before the interposition of the court is asked the property has ceased to belong to the partnership, if by a *bona fide* transfer it has become the separate property either of one partner or of a third person, the equities of the partners are extinguished, and subsequently the derivitive equity of the creditors is at an end."

In Locke v. Lewis *ante*, the supreme court held that "the sale by a partner in payment of hisown debts of goods which are in fact goods of the p rtnership, but which the partnership has so entrusted to him as to enable him to deal with them as his own, and to induce the public to believe to be his, and which the creditor receives in good faith and without notice that they are the goods of the partnership, is valid against the partnership and its creditors."

And in our case, Rummell and Cutler by their agreement and act had caused the partnership property to be

divided, and the mercantile stock to become the individual property of Rummell, and the agricultural implements, of Cutler; and they communicated the fact of such division of the partnership property, and the further fact of the dissolution of the partnership to Huiskamp Brothers, who subsequently gave credit to Rummell, and then for their debt took a mortgage from Rummell upon the property in question, which Rummell and Cutler had both told them belonged to Rummell. Under the doctrine of the preceding cases, did they not acquire a good title as against the Moline Wagon Company?

The case of Howe v. Lawrence *ante*, is an instructive and illustrative case. There it was held that a *bona fide* sale for a valuable consideration of one partner to another of all the partnership effects is valid, and the property so conveyed becomes the separate asset of the purchaser, although the firm and both partners are at the time insolvent.

In the course of the opinion, Bigelow, J., said: "The right of co-partners upon dissolution to transfer the joint property to one of the firm, is clear and unquestioned The effect of such transfer is to vest the legal title to the property in the individual partner with a right to use and dispose of it as his separate estate. It would seem to follow as a necessary consequence, that the creditors of the firm, after such conveyance would have no right to look to the property transferred as joint property upon which they have any special claim or lien. If in such transfer there is no fraud or collusion between the co-partners for the purpose of defeating the rights of the joint creditors, and the transaction is made in good faith, upon dissolution and for the purpose of closing the affairs of the partnership, the joint property thereby becomes separate estate with all the rights and incidents both in law and equity, which properly attached thereto. The mere fact of the transfer of the property does not in any way affect the right of the joint creditors. During the

continuance of the partnership and before the institution of proceedings in insolvency, the creditors of the firm have no specific claim or lien, and, strictly speaking, no equity as against the effects of the partnership. They can only institute actions at law for their debts against the firm on which they can take the separate property or the separate estate of such partner, or both, for the purpose of satisfying the executions which they may obtain upon their judgments against the firm. Beyond this right to seize the joint property on legal process, the creditors of the firm, before proceedings in insolvency, have no control over the partnership effects and no right either in law or equity, to restrain the disposition of them. The partners have the right to transfer them for a valuable consideration to each other or to strangers. The only limitation upon this right is, that it shall be exercised *bona fide*, and without any intent to defraud the creditors of the firm or deprive them of their legal or equitable claims upon the joint estate in case of insolvency. The *bona fides* of the transaction is, therefore, the only test by which to determine the right of joint creditors to have property, which has been transferred upon dissolution to an individual member of the firm, applied to the payment of the joint debts. If the transfer has been honestly made and for a valuable consideration, the property has thereby become separate estate, wholly free from any claim of the joint creditors. These principles are fully recognized in the adjudged cases both in this country and in England.

Collier on Part., Secs. 174, 894, 908.
Story on Part., Sec. 358.
Ex Parte Ruffin, 6 Vesey, 127.
Ex Parte Fell, 10 Ves. 347.
Ex Parte Williams, 11 Ves. 3.
Ex Parte Rowlandson, 1 Rose 416.
Campbell v. Mullett, 2 Swan 575.
Allen v. Center Valley Co., 21 Conn. 130, 137.
Ferson v. Monroe, 1 Foster, 462, 469.

Dixon v. Hazard, 32 N. Y. 65.
Bullett v. Chartered Fund, 26 Pa. State, 108, and *Kelley v. Scott*, 49 N. Y., 598, are equally strong, on the proposition contended for.

We call special attention to these cases.

It is quite manifest, as we think, that the court below confused the question of the liability of Rummell and Cutler to the Moline Wagon Company, resulting from the failure to give notice of the dissolution of the firm and the division of the firm property, with the question of the right of the partnership creditors to be paid out of the partnership property, and overlooked the rule of law that the latter question can not arise except where partnership property actually exists. If the partnership property by consent of all the partners, who alone have dominion over it, has been transferred for a valuable consideration to a third person, then while the partnership liability remains there is no partnership property on which the creditors can rank for priority.

III.

In support of the assigned errors 7 and 9 for the refusal of the court below to give instructions 6 and 8, we submit that these instructions should have been given. There was conflicting testimony upon the question whether there had been a dissolution of the firm of Rummell and Son. If the firm still actually existed and Huiskamp Brothers did not know it, but believed that it had been dissolved, then when they sold and delivered goods to Rummell, from which their debt secured by the mortgage in question arose, that was equivalent to selling and delivering to the actually existing firm, and their debt would exist against the firm; and it being a firm debt, one of the partners could give a mortgage on the firm property to secure it. And if the firm was doing business in the name of Jacob Rummell, the mortgage in that name would be effectual.

It was expressly decided in the case of Keck v. Fisher, 58 Mo., 532, that one partner could execute and deliver a mortgage upon partnership property to secure a partnership debt.

JAMES HAGERMAN,

Attorney for Plaintiffs in Error.

121-310

IN THE

Supreme Court of the United States.

OCTOBER TERM A. D. 1886.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP and LUKE HUISKAMP, Partners as HUISKAMP BROTHERS, Interpleaders,
Plaintiffs in Error,
vs.
THE MOLINE WAGON COMPANY,
Defendant in Error.

No. 194.
Error to the Circuit Court of the United States for the Western District of Missouri.

BRIEF AND ARGUMENT

ON MOTION TO DISMISS WRIT OF ERROR.

CHARLES M. OSBORN,
ATTORNEY FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1886.

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Error to the Circuit Court of the United States for the Western District of Missouri.

And now comes the said Moline Wagon Company, defendant in error, by C. M. Osborn, its attorney, and moves the court to dismiss the said writ of error.

And for cause the said defendant shows that the matter in dispute in said cause is less than $5,000, and therefore this court cannot take jurisdiction of said writ of error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1886.

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Error to the Circuit Court of the United States for the Western District of Missouri.

STATEMENT.

The judgment, for the review of which the writ of error in the case at bar was sued out, was rendered on the 9th of June, 1883, upon the issue presented in an attachment proceeding, brought by the defendant in error against the firm of Jacob Rummel & Son, by the interplea filed therein by the plaintiffs in error, and ordered that the plaintiffs in error take nothing by their interplea.

This attachment proceeding was commenced on the 8th day of January, 1880, by the defendant in

error, in the Circuit court of Putnam county, Missouri, against Jacob Rummel and Ed. Cutler, partners as J. Rummel & Son. Thereafter the cause was removed into the United States Circuit court for the Western district of Missouri, and by the order of that court the goods and merchandise which had been attached under the writ of attachment therein were sold by the sheriff of Putnam county (Transcript, 45), and the proceeds, amounting to $5,246.50 were paid into court, and are now in its possession and custody.

The plaintiffs in error came into this attachment proceeding and filed therein an interplea, which was afterwards, by leave of court, amended. (See amended interplea, transcript, 47.) In their original and amended interplea they alleged that the goods and merchandise, when seized by the sheriff, were in their possession, and that they were the owners thereof, and of the proceeds derived from their sale; but when the issue presented by this interplea was tried, resulting in the judgment from which this writ of error was sued out, the only claim of right to possession or of title to or interest in the goods attached, or the proceeds thereof, on the part of these interpleaders, who are now plaintiffs in error, was under a chattel mortgage given them by Jacob Rummell a few days before the attachment writ issued to secure two notes for $2,500 and $1,500, respectively, dated December 24, 1879, bearing ten per cent. interest from date. (See statement of testimony offered by interpleaders to prove title. Trans., 52, 53.) Of these two notes it further appeared, and the record in

this court shows conclusively, and without contest, that only the $2,500 note belonged to these plaintiffs in error, and that the $1,500 note was given to them without their knowledge, for the use of certain other creditors of Rummell, whose entire claims against him amounted only to $910, and were $590 less than the face of the note. (See testimony of Luke Huiskamp, Trans., 58.) This $1,500 note was given to the plaintiffs in error for the benefit of these other creditors without their knowledge or consent, and in order to give them the benefit of the mortgage to the plaintiffs; and after the plaintiffs had accepted the notes and chattel mortgage they attempted to correct the error in the amount of the $1,500 note, by endorsing on it a credit of the $590 excess over the debt actually owing to these creditors for whose benefit it was given, thus making a total sum of $3,410 due on these two notes, which it was claimed was secured by the chattel mortgage of the goods attached.

Immediately on the receipt of the notes and chattel mortgage the plaintiffs in error, by preconcerted design, took possession *under the mortgage* of the property covered by it, including the goods attached. *This possession was taken under and in conformity to the chattel mortgage, and the entire claim of right or interest in these goods attached or their proceeds was under this mortgage and as a security.* Luke Huiskamp, on the trial below (Trans., 63, Rec., 101), was asked on direct examination by the attorney for these interpleaders: "For what purpose and under what authority did

"you take possession of the store-room and the "stock of goods?" and answered: "Under the "mortgage that Mr. Rummell had given me."

At the time when the judgment upon the issue presented by the interplea, that the interpleaders take nothing by their interplea, was rendered, June 9, 1883 (Trans., 50), the utmost sum due upon both these notes, admitting that these interpleaders were entitled to assert a claim under their mortgage on behalf of the other creditors, whose claims were represented by the $1,500 note with the credit endorsed on it, was for principal, $3,410, and interest from December 24, 1879, to June 9, 1883, a little less than three and one-half years, and amounting to less than $1,193.50, making the total $4,603,50; and the utmost sum due to the plaintiffs themselves or in which they had any personal interest was $2,500, and ten per cent. interest for three and one-half years, at the most $3,375.50. It is perfectly clear that these plaintiffs, whose sole claim of interest in the property attached was under this mortgage, could have no greater interest therein than the amount for which the mortgage was a security; and if that amount was at the time when the judgment against their claim of interest was rendered, less than the amount required to give this court jurisdiction, then a writ of error from that judgment must be dismissed, and this court can not take jurisdiction of it.

Therefore, giving to the plaintiffs in error the full benefit of the debt to the other creditors than themselves, represented by the $1,500 note as cor-

rected by this credit endorsed on it, the sum for which this mortgage stood as security at the time when the judgment below was rendered, and this writ of error issued, was only about $4,600. As to these facts there can be no possible question or contest, and the authorities are conclusive that, under such state of facts, and on such record, this court has no jurisdiction of the cause, and the writ of error must be dismissed.

Brief and Argument.

1. The sum in controversy at the time of the judgment of the court below is the test of the jurisdiction of this court, and interest accruing afterwards in favor of the plaintiff in error cannot be considered in determining the jurisdiction of this court.

Knapp v. *Banks*, 2 How., 73.
Merrill v. *Petty*, 16 Wall., 1.

The test of the jurisdiction is the sum in dispute between the parties as the case stands on the writ of error.

Hilton v. *Daniels*, 108 U. S., 165.

2. In the case at bar the test of the jurisdiction is the amount or extent of interest in the proceeds of the property attached on the part of the plaintiffs in error, at the time when the judgment was

rendered, had the judgment been in their favor, and not the value of the property or the extent of interest therein claimed by the defendant in error. In *Ross* v. *Prentiss*, 3 How., 771, a bill was filed to enjoin sale under execution on judgment for $600 and costs. On final hearing a preliminary injunction was dissolved and the bill dismissed. On motion to dismiss appeal from this decree it was held that the amount of the execution, and not the value of the property, was the amount in controversy, and the appeal was dismissed.

In *Terry* v. *Hatch*, 93 U. S., 44, an appeal taken by a creditor from decree distributing assets *pro rata* and allowing to another creditor *pro rata* share in these assets on a claim much larger than the jurisdictional amount, was dismissed on ground that the amount in dispute was that part of the money payable to the other creditor under the decree that would otherwise have gone to appellant, and that was less than $5,000.

Chatfield v. *Boyle*, 105 U. S., 231.

In *Bank of Alexandria* v. *Hooff*, 7 Peters, 168, it was held that the matter in controversy on bill in equity to obtain decree for sale of land to satisfy lien under deed of trust was the amount of the debt, not the value of the land.

See also The Jesse Williamson, Jr., 108 U. S., 306.

3. The court will examine the record to determine the matter actually in controversy, and when the judgment below is for an amount sufficient to give jurisdiction, but it appears affirmatively that

part of this amount is not disputed, and that the part in controversy is less than the jurisdictional amount, this court will not have jurisdiction.

Gray v. *Blanchard*, 97 U. S., 564.
Tintsman v. *Bank*, 100 U. S., 6.
Wabash, etc., Ry. Co., v. *Knox*, 110 U. S., 304.

4. The extent of interest that the plaintiffs in error would have had in the fund in court derived from the sale of the goods attached, under a judgment in their favor, would have been the amount for which the mortgage to them at the time stood as security. At the utmost, and allowing them the benefit of the claims due to the other creditors, this amount was then only about $4,600. Payment of this sum from the fund in court would have extinguished all claim on their part of interest in or title to this fund. This sum being less than the amount required to give this court jurisdiction, this court will not take jurisdiction of this cause, and the writ of error should be dismissed.

Respectfully submitted.

C. M. Osborn,
Atty for Deft. in Error.

121-310

IN THE

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Defendant in Error.

NO. 194.

BRIEF AND ARGUMENT FOR THE DEFENDANT IN ERROR.

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1886.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP AND LUKE HUISKAMP, PARTNERS AS HUISKAMP BROTHERS,
Plaintiffs in Error,

vs.

THE MOLINE WAGON COMPANY,
Defendant in Error.

No. 194.

STATEMENT OF THE CASE.

The statement which has been submitted by counsel for plaintiffs in error does not fairly and satisfactorily present the matters which appear upon this record and which should be considered in determining the questions in the case, and omits essential features of the case and material matters of evidence, so that we feel compelled to make, on behalf of the defendant in error, a separate statement of the case, as we understand it from the record.

The questions presented by this record are those arising upon the trial of the interplea filed by the plaintiffs in error in an

attachment proceeding brought by the defendant in error against Jacob Rummel and Ed. Cutler, partners under the firm name of J. Rummel & Son.

On the 8th of January, 1880, the defendant in error brought suit in the Circuit court of Putnam county, Missouri, against Jacob Rummel and Edward Cutler, as partners under the firm name of J. Rummel & Son, upon certain notes and an account due to it from the defendants, and in aid of its suit at the same time filed an affidavit in attachment. This affidavit in attachment set forth statutory causes of attachment, charging generally that the defendants, Rummel and Cutler, had or were about to fraudulently convey or assign their property or effects so as to hinder and delay their creditors, and that they had fraudulently concealed, removed or disposed of their property or effects so as to hinder or delay their creditors. (Rec., 5.) A writ of attachment issued on the filing of this affidavit, which was served upon the defendants, Rummel and Cutler, and was levied upon, and under which there was attached and seized as the property of the defendants the stock of goods in the dry goods store of Rummel & Son, at Unionville. (Return, Rec., 6, 7.) Thereafter the cause was removed upon the petition of the defendant in error into the United States Circuit Court for the Western district of Missouri.

After the removal of the cause to the Federal court at the May term, 1880, the defendant Jacob Rummel and the interpleaders, the plaintiffs in error, appeared in the cause by the same attorneys, Rummel filing his separate plea in abatement, in which he traversed as to himself and put in issue the charges of fraud in the attachment affidavit, and the plaintiffs in error filing an interplea, in which they asserted that the goods and personal property attached were, at the date of the levy of the writ of attachment, their property under their firm name. (Rec., 42, 43.) They afterwards filed, as an amended inter-

plea, a somewhat lengthier statement of their claim of title. (Rec., 47.) The defendant in error traversed the original and amended interplea.

At the October term, 1880, the issue raised by Rummel's plea in abatement, denying as to him the charges of the attachment affidavit, came on for trial, and a verdict was returned by the jury finding these issues for the plaintiff in the cause, the defendant in error in this court, and judgment was rendered, overruling the plea in abatement and sustaining the attachment. (Rec., 46.)

The attorneys for the defendant Rummel, upon the trial of the plea in abatement in the case, afterwards appeared for the plaintiffs in error, and assisted upon the trial on this interplea. (Testimony Rummel, Rec., 78.)

While this record does not show or purport to show the precise questions of fact that were submitted to the jury on that trial nor the evidence then offered, yet throughout this record it is assumed by all parties that on that trial the question of fact at issue and submitted to the jury was as to whether or not Rummel executed and delivered to the plaintiffs in error the chattel mortgage of the property in controversy, under which they claim title, with fraudulent intent to hinder or delay his creditors. Thus the court below admitted in evidence the judgment and record on the plea in abatement for one purpose, "to show that the conveyance and transfer of the "stock of merchandise in controversy to the interpleaders was "fraudulent on the part of Jacob Rummel," and though the introduction of this evidence was objected to and exceptions taken to the ruling of the court admitting it (Rec., 80), no objection or exception was made or taken by plaintiffs in error to the statement of the court of the purpose for which he admitted it, and no suggestion was made in answer that this record and judgment did not tend to prove this fact, or that

this judgment required further evidence connecting it with the making of this mortgage by Rummel, and showing that it was the question of fact submitted to the jury. The objection taken was to the admissibility of the judgment itself as against the plaintiffs in error. So, also, in charging the jury, the court below states that the question submitted to the former jury was as to whether Rummel's intention in making the mortgage to the plaintiffs in error was or not fraudulent. "So "far as the intent to defraud, hinder and delay creditors on "the part of Rummel is concerned, a trial of that issue has "been had in this court, with the result brought to your notice "by reading from the records. The intention of Rummel in "making the mortgage to Huiskamp Brothers was found to "have been fraudulent * * *" (Rec., 86); and the exception taken to this portion of the charge (Rec., 87) is simply that this judgment could not affect the rights of the intervenors or be used against them as evidence proving Rummel's fraud.

We shall have occasion to refer to this again in considering the objection that was made and the exception taken by the plaintiffs in error to the admission of the judgment and record on the plea in abatement, and the exceptions that were taken to portions of the court's charge, referring to the trial and judgment on this plea.

Jacob Rummel and Edward Cutler, his step-son, under the firm name of J. Rummel & Son, had been engaged in business at Unionville, in Putnam county, Missouri, carrying on a general retail merchandise business, including farming implements, wagons, etc. The defendant in error, a corporation of Illinois, engaged at Moline, Illinois, in the business of manufacturing and selling wagons, having dealt with the firm of J. Rummel & Son for many years prior, in the year 1879, at different times from March to December, in reliance upon the credit and

existence of this firm, permitted the firm to contract an indebtedness to it in the sum of $6,722.61, evidenced by four notes in the firm name. (See notes, Trans., 14.) Two of these notes became due January 1, 1880, and the other two in February and March, respectively.

On January 1, 1880, when the first two notes became due, Jacob Rummel executed in his individual capacity two notes in favor of the plaintiffs in error, under their firm name of Huiskamp Brothers, for $2,500 and $1,500, respectively, and to secure them his individual chattel mortgage, conveying with other property the stock of merchandise which was attached under the writ of attachment in this case, and the proceeds of which are now in controversy. These notes and the chattel mortgage to secure them Rummel dates December 24, 1879, and makes the notes payable one day after date; so that on the day when he really executed the notes and chattel mortgage, they were apparently overdue. He thereupon incloses the two notes with a letter to Huiskamp Bros., stating that he had given a chattel mortgage to secure the notes, and that the $2,500 note was for the amount due Huiskamp Bros., and the other for some Keokuk creditors, and requesting Huiskamp Bros. to see the latter and get their claims. (Testimony of Luke Huiskamp, Trans., 57; Rec., 91.) He then files the mortgage for record. Under this mortgage and the possession taken thereunder the plaintiffs in error, upon the trial of their interplea, claimed title to the proceeds of the property, which had been attached and by order of court had been sold by the sheriff, and the proceeds thus derived paid into court.

The plaintiffs in error, under the firm name of Huiskamp Brothers, were wholesale dealers in boots and shoes at Keokuk, Iowa, and had for many years dealt with the firm of J. Rummel & Son. Upon the trial of the interplea the plaintiffs in error, in support of their title, offered in evidence the chattel mort-

gage and evidence that the stock of merchandise was transferred and delivered to them on January 6, 1880, prior to its seizure under the writ of attachment. They further offered testimony, which was admitted in evidence, "tending to show that they were wholesale dealers in boots and shoes in the city of Keokuk, Lee county, Iowa, and had been for many years; that prior to January, 1878, the defendants, Jacob Rummel & Son, were partners engaged in business in the town of Unionville, Putnam county, Missouri, under the firm name of Rummel & Son, and their business was that of general retail merchandise, including farming implements, wagons, etc.; that in January, 1878, the said partners dissolved said firm and divided the property and business thereof, and both of said partners informed the interpleaders of such dissolution.

"That after such dissolution, the said Jacob Rummel continued at the same place the general retail merchandise business, and the defendant, Ed. R. Cutler, engaged in the business of selling agricultural implements, including wagons; that after January, 1878, as between themselves, the said Rummel had no interest in the profits or losses of the business carried on by Cutler in the agricultural implement business, and Cutler no interest in the profits or losses of the merchandise business; that the indebtedness for which the stock of merchandise was mortgaged or pledged was for goods sold to Jacob Rummel after the dissolution and division of the business and property of the firm of Rummel & Son; that when the interpleaders took the mortgage, and also when they took possession of the stock of merchandise, they understood that the same belonged to Jacob Rummel, and had been led to so believe from the statements of both Cutler and Rummel; that they took said mortgage and possession of said stock of merchandise in good faith to secure their debt, and not to hinder, delay or defraud, or to assist in hindering, delaying or defrauding the creditors

of the said Rummel or Rummel & Son; that Rummel made the conveyance and transfer to the interpleaders in good faith to secure their debt, and not with the fraudulent purpose of hindering, delaying or defrauding his creditors, or those of the firm of Rummel & Son." (Rec., 53.)

But they did not offer any evidence tending to show that any notice of any kind of this alleged dissolution was given to the public, or any knowledge, notice or understanding of a dissolution of this partnership at Unionville, in the community where its business was conducted, or to show any change in the method of conducting its business, or in the name under which it was conducted, or any open, visible act in confirmation of and conformity with the pretended secret agreement of dissolution or division of the partnership property.

The plaintiffs in error called as a witness Luke Huiskamp (one of the plaintiffs in error) to show a dissolution of the partnership, and that they thereafter dealt with Rummel in his individual capacity and not with the firm of J. Rummel & Son, and his testimony is preserved in full in the bill of exceptions. (Rec., 53–78.)

He testifies on direct examination that he was informed sometime in the spring of 1879, by both Rummel and Cutler, that the firm was dissolved. (Trans., 54; Rec., 87.) He was then asked whether he acted upon that information after that, and he answers: "No, sir; I did not altogether; the facts in "the matter are these: that Rummel & Son were at the time "owing Huiskamp Brothers largely; had not paid up, nor "near paid up—I don't know for how long afterwards—*but* "*the account was continued in just the same way without any* "*change.*" (Trans., 55; Rec., 87.)

Being cross-examined as to this, and asked when he and the interpleaders began to act on this information, he says: "No; "we treated them. We sold the goods to Rummel, but the

" account was never changed." The reason being, he says that " they were owing us." (Trans., 64; Rec., 104.) He evidently means that they treated the firm as in existence, and never in fact acted upon the alleged notice of its dissolution.

He was asked if, on the trial of the plea in abatement, he had not testified that he knew for the entire time the business was done in the name of J. Rummell & Son, and understood from Mr. Rummell the name was to be kept up until the debts were paid, and they were never notified that the debts were paid, and were authorized by Rummell to charge to Rummell & Son, and this authority was never revoked. While he says, in answer, that he does not remember, does not know, and had no distinct recollection, etc., he admits: " We always charged " them in the firm name," and that one reason for keeping up that way of charging was " that they had never notified them "; and to the question, " So, then, Mr. Rummell did tell you that " the firm name was to go on until their debts were paid "? he answers, " Perhaps he did." (Trans., 75; Rec., 121.)

" Q. Was it a fact that they were going on using the firm " name until the debts were paid?

" A. As far as our house was concerned we never changed " the name. There was no special arrangement made in re- " gard to it.

" Q. Was the reason that you stated there, that you were " never authorized to change it—that the firm debts were not " paid?

" A. We got no authorization to change it, nor had been " requested to change it.

" Q. Although you had been notified of the dissolution be- " tween these parties, you were authorized to still charge them " in the firm name until the debts were paid?

" A. If we were notified that they were still——

" Q. Did you not so state that Rummell told you that they " were to use the firm name until the debts were paid?

"A. At the present—I have no recollection of that; *it "may have been the conversation, though.*" (Trans., 76; Rec., 122, 123.)

The testimony of this witnesss tends strongly to show that there was no dissolution in fact of the partnership prior to the commencement of the suit by defendant in error; and at the most that these partners had made some agreement for a future dissolution. It also tends to show that the plaintiffs in error continued their dealings with Rummel & Son as a firm, and waited for some further notice of dissolution. They charged the firm on their accounts for the goods sold by them; and the account has never been changed. The goods sold by them they shipped to the firm—to J. Rummel & Son (Trans., 74; Rec., 120); and Huiskamp says that the sign upon the store when he took or claimed to take possession under his chattel mortgage, two days before this suit was commenced, was J. Rummel & Son (Trans., 76; Rec., 123).

The witness says that the interpleaders have taken Rummel's individual note for the account due them from Rummel & Son (Rec., 123), referring as is evident from his testimony to the $2,500 note given them January 1, 1880, which was secured by the chattel mortgage.

As the question of notice on the part of the interpleaders of the manner in which these parties ostensibly carried on their business after the alleged dissolution, and the nature of the dealings between the interpleaders and this partnership are material to a proper consideration of the rulings of the court on the trial and the exceptions thereto, we venture to set out at some length the testimony of this witness, and to call the particular attention of the court to the whole of it.

The defendant in error offered testimony, which was admitted in evidence, "tending to show that the interpleaders took the mortgage on and possession of the stock of

merchandise in controversy, not in good faith, but to assist the defendant, Cutler, in hindering, delaying and defrauding his creditors and the creditors of the firm of Rummel & Son; that there was no dissolution of the firm or division of the firm property in January, 1878, or afterwards; that Jacob Rummel made the transfer and conveyance to interpleaders with the intent to hinder, delay and defraud his creditors; that plaintiffs were engaged in the manufacture and sale of wagons, and had been for many years, and had prior to January, 1878, dealt with Rummel & Son, and continued to deal with them after that time; that they never knew of the dissolution of said firm or division of its property, and there never was any published notice of such dissolution; that the debt on which they brought suit in the attachment proceedings was contracted on their part under the belief that the firm of Rummel & Son was still in existence." (Rec., 78.)

The testimony of Luke Huiskamp for the interpleaders tended strongly to show that the plaintiffs in error, in taking from Rummel the two notes and chattel mortgage, and in their actions under this chattel mortgage, did so to aid Rummel in the fraudulent purpose of hindering and defrauding the partnership creditors. On December 24, 1879, the day to which the notes and mortgage were dated back, Luke Huiskamp saw Rummel at Unionville for the purpose of finding out his financial condition, being led to go there, he says, by unfavorable reports in the commercial agencies. Rummel made him a statement that, he says, "looked favorable." Before leaving he asked Rummel that if anything should happen he would secure Huiskamp Bros.' claim, and Rummel promised to do so; but he says on cross-examination that he did not then ask for security, but was entirely satisfied with the statement made to him. (Rec., 66.)

On the 3d of January, 1880, without any request from them,

Huiskamp Bros. received from Rummel his apparently overdue notes for $2,500 and $1,500, although a portion of their bills were not then due, and the total including the sums not due amounted only to $2,500. The $1,500 note, it is claimed, was given to Huiskamp Bros. so that they could pay some other Keokuk creditors, but the total amount of indebtedness to other Keokuk creditors, as Luke Huiskamp admits, was only about $590. (Rec., 93; Trans., 58.) Rummel, it is claimed, made a mistake of about $1,000 against himself (and his other creditors).

This transcript of the record does not show the precise description in the chattel mortgage of the property conveyed, but from Huiskamp's testimony it appears that it covered not only the stock of goods, but notes and accounts in value to the amount of $5,000. In addition to this security, they also got a real estate mortgage on Rummel's half interest in the store building which they had not foreclosed at the time of the trial of the interplea. (Rec., 71.)

Luke Huiskamp, on receiving the notes with word that a chattel mortgage was made to secure them, goes at once to Unionville with his attorney, and gets there on the evening of the 5th of January. They have an interview with Rummel that evening; they point out the discrepancy between the $1,500 note and the actual indebtedness which it represented, and try to correct that by endorsing a credit on the note of the fictitious amount included in the $1,500; and then Huiskamp released to Rummel from the lien of the chattel mortgage the notes and accounts which had been included in the chattel mortgage, and which amounted in value to $5,000. His explanation of this part of the transaction on his direct examination was that these notes and accounts were released to enable Rummel to pay his debts; but on cross-examination he admits (Rec., 69), in substance, that his attorney protested against the

amount of the security, and said they could not hold that amount of property as security for their debts; "it was so large a mortgage it would look fraudulent"; and that the reason for the release was to avoid suspicions of fraud on their part.

He admits having, on the former trial, testified that it looked too large, and that Mr. Fee (their attorney) said, "You could "not hold that amount of property as security for your debt; "it was so large a mortgage that it would look fraudulent, and "I did not want it," and that "it did not look right to Mr. "Fee." "Told Rummel the mortgage was for an unneces- "sarily large amount, and to avoid suspicions of fraud on our "part, would release notes and accounts." (Rec., 69.)

At this interview he says he learned that the occasion for Rummel's having made the mortgage was the notes of the Moline Wagon Company had turned up, and that after these notes turned up he had conveyed some $13,000 worth of property to secure $3,000. (Rec., 70).

At this same interview it was arranged between Huiskamp and Rummel that Huiskamp should at once take possession of the store and goods under this chattel mortgage. He was asked the question:

"Q. How came you, when seeking to secure your $2,500 "debt, to let go the $5,000 worth of notes and accounts that "you had and decide that night to take possession of the store in "Unionville the next morning, and commence selling goods, give "up your security—up the notes, and go into the retail boot and "shoe business?" To this his only answer is: "I could not "tell you." (Rec., 71.)

He finally admits (Rec., 72) that Rummel wanted him to take possession at once, and in the absence of any other explanation for his singular actions, we may safely conclude that the whole program was arranged between them to suit Mr. Rummel's wishes.

The next morning Rummel, as Huiskamp claims, gave him possession, and he went to selling the goods in the ordinary course of business, without taking any inventory, under the old firm name of J. Rummel & Son, and without any sign or notice of his possession (Rec., 76); though their mortgage provided only for sale of the mortgaged property by the mortgagees at public sale on ten days' notice. (Rec., 53.) Two days afterwards, Huiskamp, on going to the store, finds the sheriff with his writ of attachment and Rummel. The sheriff tells him (Rec., 74) that Rummel had declared himself the proprietor, and turned the keys over to him.

The ruling of the court in admitting in evidence, over the objection of the plaintiffs in error, the record and judgment upon the plea in abatement, for the purpose of showing "that "the conveyance and transfer of the stock of merchandise in "controversy to the interpleaders was fraudulent on the part "of Jacob Rummel" (Rec., 81), and in refusing to give instructions which were asked by the plaintiffs in error, and the exceptions that were taken to portions of the charge to the jury, form the questions presented by this record.

As the test whereby to determine the validity of the mortgage, the court submitted to the jury the question as to whether the property in controversy was partnership property or the individual property of the defendant Rummel, instructing them that if the partnership was dissolved and its property divided, then the property became that of the partners individually, and in that case each partner could mortgage or otherwise deal with their property as they chose, "but if no legal dissolution "took place and the partners continued to hold the property as "partnership property, bought, sold and advertised it as firm "property, then it remained partnership property so far as "creditors were concerned, who knew nothing of the division "and who trusted the firm," and if they should find the prop-

erty in dispute to be partnership property, then the mortgage by Rummel to pay an individual debt was invalid.

The exception taken to this portion of the instruction and the court's ruling in refusing to give the third, fourth, fifth and seventh instructions asked by the plaintiffs in error may properly be considered together as the first question in the case (reversing the order in which counsel has presented them).

As a dependent question, in case they should find that the property was not partnership property, but the individual property of Rummel, the court submitted to the jury to determine whether the interpleaders had not taken the mortgage and assumed to act thereunder in participation with and to aid in a fraudulent scheme on Rummel's part to hinder and delay his creditors and the partnership creditors; and on this question he instructed them that the verdict and judgment overruling the plea in abatement and sustaining the attachment had determined that Rummel's intention in making this mortgage was fraudulent as to creditors, but that the mortgage was valid as to the interpleaders if they did not participate in or aid or assist him in the illegal act, and that the entire testimony and all the matters in evidence should be considered in determining whether or not the interpleaders had acted to aid Rummel in carrying out his fraudulent purposes, and that in dealing with Rummel under the circumstances in evidence the interpleaders "must "exercise the utmost good faith, and their failing to do so de- "prives them of any right under the mortgage."

The exceptions to the admission in evidence of the record and judgment on the plea in abatement and to the portions of the instruction referring to the trial and judgment on this plea, and the refusal of the court to give the instruction asked withdrawing them from the jury, may also be considered together as the second question.

And the refusal of the court to give the sixth and eighth instructions asked is made a third question.

ARGUMENT.

I.

THE EXCEPTION TO THE PORTION OF THE INSTRUCTION GIVEN TO THE JURY IN REFERENCE TO THE DISSOLUTION OF THE PARTNERSHIP AND THE NATURE OF THE PROPERTY IN CONTROVERSY, AND THE REFUSAL TO GIVE THE INSTRUCTIONS NUMBERED 3, 4, 5 AND 7 ASKED BY PLAINTIFFS IN ERROR, AND THE 4TH, 5TH, 6TH, 8TH AND 11TH ASSIGNMENTS OF ERROR.

The defendant in error claimed the property in controversy under the writ of attachment as partnership property and belonging to J. Rummel & Son. The judgment overruling the plea in abatement and sustaining the attachment conclusively determined its right to hold this property under the attachment writ so far as the partnership or Rummel were concerned.

The claim to the property interposed by the plaintiffs in error, under the chattel mortgage made to them by Rummel in his individual capacity, was that it had become his individual property by virtue of a dissolution of the partnership and division of its property between Rummel and Cutler. They claimed that the mortgage was given them to secure a debt due them from Rummel individually, and not that the mortgage was the act of the partnership or its execution authorized by it. The nature of the claim of title asserted by plaintiffs in error, and the basis upon which it was placed by them, seems to have been overlooked by counsel, and in his argument it is apparently assumed that the claim asserted by plaintiffs in error was that the mortgage was the act of the

partnership, and was consented to by all the partners. (See pp. 25, 30, Argument.) But no evidence was offered tending to show any consent to the mortgage by the partnership, or that it was, in any sense, an act of the partnership. It was the individual conveyance of Rummel, and to be treated as such in determining its validity.

The evidence before the jury upon this branch of the case was that introduced by the plaintiffs in error "tending to show "(as the bill of exceptions states) that prior to January, 1878, "the defendants, Jacob Rummel & Son, were partners engaged "in business in the town of Unionville, Putnam county, Mis- "souri, under the firm name of Rummel & Son, and their busi- "ness was that of general retail merchandise, including farm- "ing implements, wagons, etc. That in January, 1878, said "partners dissolved said firm and divided the property and "business thereof, and both of said partners informed the in- "terpleaders of such dissolution. That after such dissolution "the said Jacob Rummel continued at the same place the gen- "eral retail merchandise business, and the defendant, Cutler, "engaged in the business of selling agricultural implements, "including wagons. That after January, 1878, as between "themselves the said Rummel had no interest in the profits "or losses of the business carried on by Cutler in the agricult- "ural implement business, and Cutler no interest in the profits "or losses of the merchandise business; that the indebtedness "for which the stock of merchandise was mortgaged or pledged "was for goods sold to Jacob Rummel after the dissolution "and division of the business and property of the firm of Rum- "mel & Son; that when the interpleaders took the mortgage "and also when they took possession of the stock of merchan- "dise, they understood that the same belonged to Jacob Rum- "mel, and had been led to so believe from the statements of "both Cutler and Rummel."

Also that introduced by the defendant in error, "tending to "show that there was no dissolution of the firm or division of "the firm property in January, 1878, or afterwards; that "plaintiffs (the defendant in error) was engaged in the manu- "facture and sale of wagons, and had been for many years, "and had prior to January, 1878, dealt with Rummel & Son, "and continued to deal with them after that time; that they "never knew of the dissolution of said firm or division of "its property, and there never was any published notice of "such dissolution; that the debt on which they brought suit in "the attachment proceedings was contracted on their part "under the belief that the firm of Rummel & Son was still in "existence."

And in addition there was the testimony of Luke Huiskamp, one of the interpleaders, and a witness on their behalf, which tended very strongly to show that if any agreement had been made in reference to a dissolution between Rummel and Cutler, it did not contemplate a present dissolution or division of property, but rather a division or dissolution at some future time, when the firm debts were paid, and that until then the partnership business would be continued by them as theretofore; that whatever may have been its purport, the agreement was not acted upon or carried into effect, and the business was con tinued without change in name or manner, and that it was abandoned, and that both Rummel and Cutler continued to carry on business and to contract debts in the partnership name. It also tended to show that the plaintiffs in error themselves dealt with and treated the partnership as in existence after the alleged notice of dissolution, and continued to so deal with it down to the time when they received the chattel mortgage, and that they had notice and knew that the business was being carried on in the firm name and without any change, and without any open or public evidence of a dissolution of the partnership.

It will be observed that counsel in the statement in his argument on this branch of the case (Argument, 24) of the evidence bearing on it, and the matters of fact which it tended to show, omits reference to the testimony of Luke Huiskamp and to the facts which it tended to show, and also omits to state that the testimony introduced by the defendant in error tended to show "*that there was no dissolution of the firm or division of the firm "property in January, 1878, or afterwards;*" and from the argument for appellants on this question the inference might well be drawn that no question of fact was made as to the alleged dissolution of the partnership, or as to whether the partners had in good faith by their subsequent method of dealing, or by the manner in which and name under which the business was thereafter carried on, made public, evident or visible the existence of any agreement of dissolution between them, or any division of property or business between them, or as to whether these partners had not continued, without change, to deal with and treat the property in controversy as partnership property, or as to whether the plaintiffs in error themselves had not continued up to the time they received their mortgage to recognize the existence of this partnership by the manner and nature of their dealings with Rummel. And it is assumed that the only question of fact raised by the evidence was as to whether the defendant in error had notice of the dissolution of this partnership, and that the court's instruction made the validity of the mortgage depend entirely upon that question.

On the contrary the dissolution itself, the recognition of any dissolution or division of property by any open or visible change in the method in which the business was carried on, or in the name under which it was carried on, the continuance of the partners to act and deal as partners generally, and in respect to the property in controversy and to treat it as partner-

ship property, and the recognition of the existence of the partnership by the plaintiffs in error themselves, were all controverted questions. Indeed, the only uncontroverted question in the case was that the defendant in error had had prior dealings with the partnership, and, without any notice of any dissolution or change, continued to deal with it, and allowed the indebtedness in suit to be contracted in reliance upon its existence.

Another important point in this connection is that no evidence was offered by the plaintiffs in error tending to show that they did not know the manner in which the business was conducted, and the property in controversy held and dealt with after the alleged dissolution, while the testimony of their witness Huiskamp tended strongly to show full notice on their part that Rummel and Cutler down to the time when Rummel gave them the mortgage continued the business in the same manner as before, and under the firm name and ostensibly and publicly as a partnership. Nor was any evidence offered tending to show any public or open and visible act by these partners evidencing a dissolution of the partnership or division of its property, or any understanding or notice to that effect in the community where its business was located.

The theory of the instruction which the court gave on this branch of the case was, that if there was a valid dissolution of the partnership and division of its property, then the partnership property became the individual property of the partners, and the mortgage made by Rummel in his individual capacity would convey a good title; but, if there was no valid dissolution, and the partners continued to hold, deal with and treat the property in controversy as partnership property, advertised it as such, bought, sold and dealt with it as firm property, then it remained partnership property, and in that case the mortgage was invalid and void as against creditors of the firm. The entire instruction on this point was as follows (for,

in determining the propriety of this exception, the whole instruction on this point should be considered):

"It is an undisputed fact that up to January, 1878, Rummel "and Cutler, under the firm name of Rummel & Son, carried "on partnership business, in which the partners were equally "interested. It is claimed by Huiskamp Brothers that in January, 1878, a dissolution of the partnership of Rummel & "Son took place, and that thereafter each partner, under the "division of the property made, held property in their individual rights only. It is true and you are instructed that if "you shall find from the testimony that a division of property "between the partners took place, and that therefore the "property was held separated by each partner as individual "property, and not as the property of the firm, then each "partner could deal with his own property as he chose; could "convey or mortgage the same and deliver possession thereof "to any one without creditors of the firm having the right "to complain.

But if no legal dissolution of the partnership took place in "January, 1878, or since, and the partners continued to hold the "property in controversy as partnership property, bought, sold "and advertised it as firm property, such property remained "partnership property, so far as creditors are concerned, who "knew nothing of the division, and who trusted the firm. Under the view of the case last presented you will have to "determine whether there was a dissolution of the partnership. As already stated, it is an undisputed fact "that up to January, 1878, a partnership between "Rummel and Cutler did exist; that the partnership "dealt in general merchandise, including farming implements, "wagons, etc., and that dealings prior to that time were had "between the Moline Wagon Company and the firm of Rummel & Son. The Moline Wagon Company had a right to

" presume that the persons once composing a firm, and who " continued doing business under the firm name are still part- " ners, and that the partnership continues to exist until notice " of a dissolution was given. No agreement or understanding " between the partners—no division of the property of the " firm—can relieve either the firm or the partners of their legal " liability as to creditors who extend credit to the firm, nor are " creditors who extend credit to the firm bound to regard pub- " lic rumors, even if they heard them, if the partners continue " the partnership name and avail themselves of the partnership " credit. You are therefore instructed that the partnership " between Rummel & Cutler in 1878 continued to exist up to " the time of the creation of the debts sued on by the Moline " Wagon Company, unless public notice of the dissolution " of the partnership was given, or actual notice of such disso- " lution was brought home to the Moline Wagon Company. " If, under this view of the law, you shall find from the evi- " dence that plaintiff, the Moline Wagon Company, gave credit " to the firm of Rummel & Son, composed of Rummel and Cut- " ler, then the firm and each of the partners are liable for the " debt thus contracted. All of the assets of the partner- " ship, both merchandise, notes, accounts, as well as all " wages and property of the partnership which Cutler may " have handled in his division of the partnership, as well as all " notes and accounts which Cutler may have taken, together " with all property of the partners, in case of insufficiency " of partnership assets, are liable for debts created by the " partnership. If you shall find that the partnership once ex- " isting between Rummel and Cutler had not been dissolved, " and the property in kispute to be partnership property, then " Rummel could not take such partnership property and pay " an individual debt with it, such as Huiskamp Brothers claim " to have, and the mortgage read in evidence given them is " void as against creditors of the firm." (Rec., 84, 85.)

It makes the validity of the mortgage depend upon whether the property was partnership property or belonged to Rummel individually, following the general rule that partnership property cannot be applied to the payment of the individual debts of the partners, without the assent and authority of all partners (in other words, without its being the act of the partnership), and a conveyance or mortgage of partnership property made by a partner in his individual behalf, to satisfy or secure the payment of his individual debts, is fraudulent and void as to the partnership and its creditors.

Story on Partnership, § 132.
Kent's Com., Vol. 3, p. 44.
Rogers v. *Batchelor*, 12 Peters, 221.
Locke v. *Lewis*, 124 Mass., 1.
Livingston v. *Roosevelt*, 4 Johns., 251.
Dob v. *Halsey*, 16 *id.*, 34.
Flanagan v. *Alexander*, 50 Mo., 50.
Ackley v. *Staehlin*, 56 *id.*, 558.
Price v. *Hunt*, 59 *id.*, 258.
Helliker v. *Francisco*, 65 *id.*, 598.
Phelps v. *McNulty*, 66 *id.*, 555.
Johnson v. *Hersey*, 70 Me., 74.
Cotzhausen v. *Judd*, 43 Wis., 213.
Hurt v. *Clarke*, 56 Ala., 19.

The transaction or conveyance is not invalid as to the grantee or the person dealing with the partner, if the partner in applying the partnership property to the payment of his individual debt, or to his individual uses, or in selling or mortgaging it, is acting apparently within the powers vested in him as a partner, and within the scope of the partnership business, or if the partnership has permitted him to appear as the ostensible owner of the property and hold it as his own, and the

grantee or the creditor taking from him partnership property in payment and satisfaction of an individual debt did not have notice that the property was partnership property, or that the partner was abusing the powers and authority given to him.

Locke v. *Lewis*, 124 Mass., 1.
Livingston v. *Roosevelt*, 4 Johns., 251.

If, however, he did have notice that the property was partnership property, or that the partner in this application of the partnership property was acting without authority from the partnership, he will be held to act *mala fide* and in fraud of the partnership, and the transaction to be a nullity.

Story on Partnership, § 132.
Kent's Com., Vol. 3, pp. 42, 43.
Donovan v. *Dymond*, 3 Wood's C. Ct., 141.
Cotzhausen v. *Judd*, 43 Wis., 215.

The question as to whether the grantee has notice that the property is partnership property cannot arise where the property has not been held by the partner ostensibly as its owner, but has been held, treated and dealt with as partnership property, and the instruction submits the question to the jury as to whether the partners continued to hold the property in controversy as partnership property, bought, sold and advertised it as firm property, and makes the manner in which the partners continued ostensibly to hold the property in part the test as to whether it was partnership property. And as the plaintiffs in error have not by their exception to the instruction and the grounds upon which they base it made objection to it, that the question of notice on the interpleaders' part that the partners were continuing to hold and deal with the property in controversy as partnership property should have been submitted to the jury, and they should have been instructed that

without such notice the mortgage would be valid as to them, even though the property was partnership property, and as no evidence was offered tending to show that they did not have such notice, and their own testimony tended to show that they did, the question as to whether the conclusion of the instruction, that if they found that the property was partnership property, then the mortgage was void as against creditors of the firm, was or not too broad, does not arise and need not be considered.

The grounds of the exception taken to the bracketed portion of the instruction on this point are stated by plaintiffs in error to be that it assumes that the plaintiffs (the defendant in error) had a lien on the property prior to the levy under the writ, and because it ignores the rights of intervenors and because the case is made to turn on the fact whether plaintiffs had notice of the dissolution of the firm of Rummel & Son, instead of upon the fact whether interpleaders had title to the property in controversy, as against Rummel and Rummel & Son, at the time of the levy under the writ of attachment. (Rec., 89.) The argument on their behalf does not discuss these several grounds of the exception, but states counsel's view of the instruction to be as follows: "The central idea "in the charge of the court covered by the fourth exception is "that, although Rummel and Cutler may have actually dis-"solved their firm in 1878 and divided the firm property; "though they may have told Huiskamp Brothers of the dis-"solution and division of the property, and that Rummel "owned the merchandise stock, and although Huiskamp "Brothers subsequently sold Rummel goods, and for the debt "thus incurred took the mortgage in question, yet the mort-"gage was void as to the Moline Wagon Company, unless "they were informed of the dissolution of the firm of Rum-"mel & Cutler and the division of the firm property." * * *

In other words, the view of the court below was that the creditors of Rummel & Cutler acquired such an interest in their property simply from the fact of being creditors that a creditor of Rummel, although he might acquire a good title by mortgage as against Rummel & Cutler, could not acquire a good title as against the partnership creditors of Rummel & Cutler. (Argument, 25). And again, on page 30: "It "is quite manifest, as we think, that the court below con- "fused the question of the liability of Rummel & Cutler to "the Moline Wagon Company, resulting from the failure to "give notice of the dissolution of the firm and the division of "the firm property, with the question of the right of partner- "ship creditors to be paid out of the partnership property, "and overlooked the rule of law that the latter question can- "not arise except where partnership property actually exists."

It is evident that counsel ignores wholly the question of fact as to whether there was a dissolution of this partnership or division of its property between the partners, and as to whether the property in controversy was or not partnership property, and disregards that portion of the instruction which submits to the jury the question of dissolution and division of the property, making it the test by which to determine whether the property was or not partnership property. Counsel also ignores the question of fact as to the manner in which the partners continued to publicly deal with this property after their alleged dissolution, and assumes that the dissolution itself was not controverted, and that the sole question was as to whether the defendant in error had notice of it, and that the validity of the mortgage was made to depend entirely upon such notice.

We submit, however, that the central idea of the instruction is that there cannot be a valid dissolution of partnership or division of the partnership property between the partners so

as to convert it into their individual property, if the partners continue to hold the property as partnership property, and, without change in manner or name, to carry on business as partners.

It submits to the jury the question as to whether there was a dissolution of partnership and division of the property between the partners, and instructs them that if there was then the property became the individual property of the partners, and each partner could mortgage it without any right of the firm creditors to complain, but if there was no valid dissolution and the partners continued to hold the property in controversy as partnership property, bought, sold and advertised it as firm property, then it remained partnership property, so far as creditors are concerned, who knew nothing of the division, and who trusted the firm, and it will be observed that this is the sole test given by which to determine whether this property was partnership property or not. Instead of its being as counsel interprets it, that if no notice of dissolution was given to the defendant in error, then the property in controversy was partnership property as to it and the mortgage was void, notice to the defendant in error is not made a factor in determining whether this was or not partnership property.

There is no suggestion in the instruction that the defendant in error had a lien upon the property other than that arising under the writ of attachment. It states to the jury the well-recognized rule (which does not require the support of authorities) that the creditor who, having had dealings with the firm, continues to deal with it without notice of any dissolution, and gives credit to the firm in reliance upon its existence, is a partnership creditor, and that the partnership remains in existence as to him, and the firm and each of the partners is liable for the debt thus contracted, and that all the partnership assets and the individual property of the partners in case of

insufficiency of partnership assets would be liable for debts created by the partnership.

The gist of the instruction was that if the property was partnership property, then the mortgage to secure an individual debt was invalid and void as to partnership creditors. Though the omission to qualify this by a saving clause in favor of a grantee who should, in good faith and for a valuable consideration, take such conveyance without notice that the property was partnership property, would make it too broad to serve as a general statement of the rule, it must be considered sufficient for the purposes of this case, because, as has been already pointed out, the plaintiffs in error have not objected to it on this ground. The nature of the property is made to turn entirely upon the question as to whether there was a valid dissolution of the partnership, and upon the manner in which the partners ostensibly continued to hold and deal with it, and in which they held it out to the public, and not upon the question of notice of dissolution to the defendant in error, which is referred to solely in respect to whether the defendant in error was a partnership creditor. The instruction on this point must be considered as a whole, and not isolated sentences, nor simply the portion covered by the exception. It will be found, we submit, not in conflict with the principles of law governing the rights of partnership creditors referred to, nor the authorities cited, by counsel.

By a *bona fide* agreement of dissolution and division of partnership property among the partners, or by a *bona fide* transfer of the partnership property to one partner, it is converted into the individual separate property of the partner, wholly free from the claims of the joint creditors, and partnership creditors have no liens on the partnership property for their debts, but a right which approaches to a lien, and is sometimes called a quasi-lien, to work out their equities

through the lien which the parties themselves have upon the partnership effects for the discharge of its debts and obligations; and a *bona fide* transfer for a valuable consideration, whether to one partner or to a stranger, deprives the joint creditors of this right.

Story on Partnership, §§ 358, 360.
3 Kent's Com., 65
Case v. *Beauregard*, 99 U. S., 119.
Fitzpatrick v. *Flanagan*, 106 *id.*, 648.
Schmidlapp v. *Currie*, 55 Miss., 597.

But to the validity of the transfer or agreement of dissolution and division of the partnership effects, it is an invariable condition that it be *bona fide*, and if not, it is invalid and a nullity, save only in the case of a *bona fide* purchaser for a valuable consideration, without notice of the *mala fides* of the transaction.

Bump on Fraud. Con., 389 (3d Ed.).
Case v. *Beauregard*, 99 U. S., 125.
Howe v. *Lawrence*, 9 Cush., 555, 556.
Goodbar v. *Cary*, 16 Fed. Rep.,
Wilson v. *Robertson*, 21 N. Y., 587.
Ransom v. *VanDeventer*, 41 Barb., 307.
Menaugh v. *Whitewell*, 52 N. Y., 146.
Ex parte Williams, 11 Vesey, 3, 5.
In re Waite, 1 Lowell, 207.

It is not sufficient that the partners have made an agreement contemplating a dissolution of the partnership, but if this agreement is not acted upon and carried into effect and accompanied by some open, visible or public change in the manner or name of the business, and if the partners continue to deal with and treat the property as partnership property, the agreement itself cannot effect a conversion of the property into the indi-

vidual property of the partners, but it should be treated as abandoned, and the property as partnership property.

Moreover, a secret agreement of dissolution and division or transfer of property among the partners or to some one of them, which is not made public and accompanied by public notice and some open and visible evidence of its existence, is fraudulent, void and a nullity.

In re Tomes, 19 Nat. Bank. Reg. Reports, 37.
Richardson v. *Macfarland*, 10 *id.*, 381.
Flack v. *Charen*, 29 Md., 312.
See also, *In re Sheppard*, 3 Benedict, 347.
In re Kruger, 2 Lowell, 66.
In re Dunkle, 7 Nat. Bank. Reg. Reports, 107.
Kelley v. *Scott*, 49 N. Y., 595.

An agreement of dissolution that is wanting in good faith and bears the stamp of fraud and *mala fides* in its secrecy and want of open and visible evidence of its existence is a nullity, and will not convert the partnership property into the individual property of the partners; and a valid title to property held ostensibly by the partnership for its purposes, cannot be derived through a conveyance by one partner in his individual behalf, because the grantee, though he may purchase in good faith and for a valuable consideration, is bound to take notice of the ostensible manner in which the property was held, and a secret dissolution, which has *mala fide* been kept secret and is in conflict with the public, visible and ostensible actions of the partners and the partnership, cannot give validity to the conveyance. The instruction, therefore, properly submitted the question as to the manner in which the partners continued to hold and publicly deal with this property in connection with the question of the dissolution itself as the tests by which to determine whether the property was or not partnership property.

There is no foundation for the suggestion that the interpleaders obtained rights through this mortgage as against the partnership other than by virtue of a dissolution of the partnership, or that the partnership consented to the conveyance and the transfer was made by its assent.

Under this instruction, if the jury had found that an agreement of dissolution and division of property had been made between these partners, and that they had thereafter acted upon it and carried it into effect, and had not continued to hold this property as partnership property, and to deal with it as such, then, independently of the question as to whether notice of the dissolution had been given to the Moline Wagon Company or not, the property would be held to have been the individual property of Rummel, and the mortgage (independently of the question of fraud) to be valid. The question, therefore, is not to be considered as suggested by counsel, as between a creditor who, not having received notice of a dissolution of the partnership, has continued to deal with it as in existence, and a creditor who, having received such notice, has in reliance upon it and in good faith given credit to the individual partner and taken from him his conveyance of property which he supposed to belong to the partner individually; but here the dissolution itself was controverted, and the question was whether the partners had ever acted upon or given effect to any agreement as to dissolution or division of property, and had not continued to hold the property as partnership property and to deal with it as such, and also whether the plaintiffs in error did deal with Rummel in his individual behalf or did rely upon the partnership being dissolved, or treat it as dissolved. And practically the question of law here is whether the plaintiffs in error could legally rely upon this partnership being dissolved, if the partners were continuing to their knowledge to hold the property as partnership property and to publicly deal with it as such,

and were continuing to carry on business as a partnership under the firm name; and we submit that the instruction on this branch of the case in the light of the evidence fairly submits the material question to the jury, and is not open to the objections which have been taken and argued against it.

The refusal of the court to give the instructions asked by the plaintiffs in error upon this branch of the case requires but little consideration. If the instruction that the court gave is found to have been proper, considering the questions of fact in controversy, then these instructions were properly refused. The theory of these instructions is stated in the argument (page 25) to be, "that if Rummel & Cutler had in fact "dissolved and divided the property, Rummel taking the mer- "chandise stock, or, if Rummel & Cutler led Huiskamp "Brothers to believe that the stock of merchandise belonged "to Rummel, then Huiskamp Brothers acquired the title by "Rummel's mortgage." This ignores entirely the question as to whether the partners did not continue to hold this property as partnership property, and did not ostensibly deal with it as such, and did not by their public and open method of conducting the business, and by the name under which they conducted it, hold themselves out as partners and this property as partnership property. It ignores the question as to whether a secret agreement of dissolution not accompanied by any public or visible evidence of its existence in the manner or name under which the business is conducted, can be held valid and *bona fide*, and can work a conversion of the joint property, which is publicly held as partnership property, into the separate individual property of the partners. It also ignores the question as to whether the interpleaders, who claim to have received notice of this alleged dissolution, did, in fact, give reliance to it, and deal with Rummel in his individual capacity; and the further question, as to whether, having notice

that the business was being continued in the partnership name, and without any change or any public or open evidence or signs of a dissolution of partnership or division of its property, they could validly disregard this, and deal with Rummel as the owner of this property, and with such notice derive a valid title through his individual conveyance. If the instruction which was given, that the jury should determine whether there was a dissolution of the partnership from the manner in which the partners continued to hold this property and deal with it, and in which they conducted their business, was proper, then these instructions which were asked were properly refused.

We submit that an agreement of dissolution must be publicly acted upon to have validity, and that if the partners continue to hold property as partnership property, and publicly deal with it as such, and to carry on the business under the firm name, then there has been no dissolution, and the property remains partnership property; and, in the face of the public notice given by the ostensible method of conducting the business, a valid title to property publicly and openly held as partnership property cannot be derived by the individual conveyance of one partner, even though the grantee claims to place reliance upon some secret arrangement or division of property between the partners.

We submit that the material questions in determining the validity of this mortgage were whether these partners had continued to publicly act in direct variance with the alleged agreement of dissolution, and to hold the property as partners and carry on the business as partners, and whether the plaintiffs in error did not know that the partners continued to hold the property and carry on the business as a partnership. These questions were ignored by these instructions, and they were properly refused.

II.

THE EXCEPTION TO THE ADMISSION IN EVIDENCE OF THE RECORD AND JUDGMENT UPON THE PLEA IN ABATEMENT AND TO THE REFERENCES, IN THE CHARGE TO THE JURY, TO THE TRIAL AND JUDGMENT THEREON, AND THE REFUSAL OF THE COURT TO WITHDRAW THIS RECORD AND JUDGMENT FROM THE JURY.

The question presented by these exceptions and assignments of error is whether the verdict and judgment upon a plea in abatement in an attachment proceeding, that a conveyance by the defendant was made with fraudulent intent on his part to hinder and delay his creditors, and therefore sustaining the attachment, is or not conclusive evidence to show this fraudulent intent on part of the grantor as against the grantee in this conveyance, who was a party to the cause and had filed an interplea therein asserting title to the property attached based upon this conveyance, at the same time that the defendants' plea in abatement was filed.

The court admitted in evidence, over the objection of plaintiffs in error, the record on the plea in abatement, including the affidavit for attachment, Rummel's plea in abatement and the verdict and judgment thereon, overruling the plea and sustaining the attachment, for one purpose, "to show that the conveyance "and transfer of the stock of merchandise in controversy to "the interpleaders was fraudulent on the part of Jacob Rum-"mel" (Rec., 81). To the introduction of this record the interpleaders objected, "on the grounds that they were not "parties to the trial and issue arising upon the plea in abate-"ment, and that the issues tried thereon were entirely separate "and distinct from the issues upon trial here, and the testimony

" is irrelevant and immaterial, relating to different parties and " different subject-matter."

It will be observed that the real ground stated of objection to the introduction of this record in evidence is that the interpleaders were not parties to the trial on the plea of abatement, and that the issues thereon were separate from the issues on the interplea; and that no exception is taken to the statement of the court of the purpose for which it admitted this evidence, and no suggestion is made, nor objection taken that this record did not tend to show fraud on the part of Rummel in making this conveyance. As the affidavit for attachment and the plea in abatement did not in terms refer to the conveyance from Rummel to the interpleaders, it might properly have been objected that the verdict and judgment overruling the plea in abatement and sustaining the attachment did not in themselves tend to show fraudulent intent on Rummel's part in making this conveyance, and that a foundation should have been laid for the admission of this record by evidence showing that upon the trial of the plea in abatement which resulted in this judgment the question of fact at issue related to Rummel's intent in making this conveyance, and that this was the question decided on that trial. Parol evidence was admissible to connect this judgment with the conveyance, and to show the precise questions of fact which were tried and determined as against Rummel.

Bigelow on Estoppel, 4th Ed., 81, 673.
Miles v. *Caldwell*, 2 Wall., 43.
Packet Co. v. *Sickles*, 5 *id.*, 580.

But as the plaintiffs in error did not interpose this objection to the purpose for which this record was admitted in evidence, and did not require a foundation to be laid for its admission for this purpose, they cannot now be heard to urge this formal objection to the admission of this record.

The identity of the transaction in question upon the former trial with that in question here was tacitly assumed, and the references to the former trial in the testimony of Luke Huiskamp and in this record tend to establish this identity. And the court, in the charge, in referring to the trial and judgment on the interplea, says that, "So far as the intent to hinder, delay and "defraud creditors on the part of Rummel is concerned, a trial of "that issue has been had in this court. * * * The intention "of Rummel in making the mortgage to Huiskamp Brothers "was found to have been fraudulent. * * "; and to the same effect in the introductory portion of the instruction, to which the first exception is taken by plaintiffs in error. And the exceptions which were taken to these references to the trial and judgment on the plea in abatement are based upon the ground that the judgment on the plea in abatement could not affect the rights of intervenors and be used against them as evidence proving Rummel's fraud (Rec., 87), but not on any want of connection between the judgment itself and the conveyance.

Therefore in determining whether the judgment on the plea in abatement was properly treated as conclusive upon the plaintiffs in error as to Rummel's intent in making this conveyance, it must be considered that the question at issue upon the plea in abatement was as to whether Rummel made this conveyance with the fraudulent intent to hinder and delay his creditors, and that the verdict and judgment overruling the plea and sustaining the attachment determined that such was his intent. It must be viewed as if the affidavit for attachment expressly charged that this conveyance was made with fraudulent intent by Rummel, and the plea in abatement expressly traversed this charge; and the suggestion in the argument for plaintiffs in error (page 21), that "there is nothing in "the record to show whether one or all of the alleged causes

"of attachment were tried, or to what act or contemplated act "of Rummel or Cutler in disposing of their property they ap- "plied," is not proper, in view of the specific objections and exceptions which were interposed and taken in the court below, and the omission to take objection on this ground:

The court below not only admitted the record of this judgment in evidence for the purpose of showing fraud on Rummel's part in making this conveyance, but in effect instructed the jury that it was conclusive evidence of fraudulent intent on his part; and, therefore, the important question in this regard is, whether these interpleaders in this attachment proceeding did not become, by filing their interplea in the cause, parties to the cause in such sense and to such extent that the judgment on the plea in abatement (which was filed at the same time with their interplea) rendered therein after their appearance in the cause is conclusive on them. This question depends upon the status of interpleaders in an attachment proceeding. We shall not contend that an attachment proceeding, where the defendant has been personally served with process, is a proceeding *in rem*, and, therefore, a judgment therein is conclusive upon every one. That such proceeding is *in personam* has been conclusively determined.

Mackin v. *Chandler*, 2 Brock. (Marshall, C. J.), 125.
Woodruff v. *Taylor*, 20 Vt., 73, 76.
Megee v. *Beirne*, 39 Pa. St., 162.

But our claim will be that these interpleaders, on filing their interplea in the cause, became parties to it, and are concluded by judgments rendered thereafter in the case.

The Missouri statute authorizing interpleading in such proceeding is as follows (Rev. Statutes, Sec. 449): "Any per- "son claiming property, money, effects or credits attached may

"interplead in the case, verifying the same by affidavit, and "issues may be made upon such interplea and shall be tried as "like issues between plaintiff and defendant, and without any "unnecessary delay." The claimant interpleads *in the case*, and the issues on his interplea are tried in the case. It is true that the proceeding on the interplea has been, in some respects, treated as an independent proceeding by the Missouri courts, and so it is said *obiter* in *Ladd* v. *Couzins*, 35 Mo., 516, that the issue on an interplea must be tried first without any unnecessary delay as an original cause between plaintiff and defendant; and in *Brennan* v. *O'Driscoll*, 33 Mo., 372, that the record on separate interpleas must be kept distinct; and it is held that proceedings in case of interpleader in attachment are in the nature of distinct suits, and judgments thereon are subject to review on appeals, though the attachment or garnishment may be still pending.

Wolff v. *Vehhe*, 17 Mo. App., 36.

And yet, on the other hand, it is in every case recognized that the interpleading is a proceeding in the cause, and that the interpleader becomes *quo modo* a party to it. After judgment on the attachment issue the right to interplead is gone. "Any person claiming title to the property should have come "into court when the attachment was pending, and interposed "an interpleader."

McElfatrick v. *Macauley*, 15 Mo. App., 102.

In *Richardson* v. *Jones*, 16 Mo., 177, and *Richardson* v. *Watson*, 23 Mo., 34, it is held that the judgment on the interplea is conclusive as to claimant's right in the property attached, and the claimant cannot afterwards sue the defendant to enforce the right claimed. It thus treats the interplea as forming a part of the entire cause and makes the judgment

conclusive not only between the attachment plaintiff and the interpleader, but also between the latter and the defendant.

The statute authorizing the interpleading clearly makes it a part of the case, and the interpleader a party to it. The Missouri courts in construing this provision, have given to the interplea a quasi-independent status, but in no case is it held that a judgment upon the attachment issue rendered after the interpleader has become a party is not conclusive upon him so far as it effects his rights, or that the interpleader does not become a party to the cause in such sense as to be bound by judgments thereafter rendered therein. As between the attaching creditor and the interpleader judgment sustaining the plea in abatement and dissolving the attachment is certainly conclusive on the attaching creditor. It puts an end to the attachment lien and the interplea as well.

Peck v. *Stratton*, 118 Mass., 406.

Aud we submit that a finding upon defendant's plea in abatement that the defendant had not made this conveyance with a fraudulent intent of hindering and delaying his creditors and judgment thereon, dissolving the attachment, would be a bar to any subsequent proceeding by the defendant in error against these interpleaders to attack this conveyance, based on charges of fraud against Rummel in making it, and that the interpleaders were parties to the cause on the trial of the plea in abatement in such sense that they could claim benefit of such judgment.

It cannot be questioned that this judgment on the plea in abatement is conclusive as against the interpleaders to the extent that it determines absolutely the validity of the attachment and the right to retain the attached goods as against the defendants. We contend that, being conclusive as to the validity of the attachment, it is conclusive as to the existence of the

cause which had been asserted for the issuance of the attachment writ, viz: that Rummel's intent in making this conveyance was fraudulent under the law. In other words, the judgment sustaining the attachment necessarily involved the existence of the ground upon which the attachment was issued, and if conclusive as to the validity of the attachment it must be conclusive also as to the existence of the fraudulent intent on defendant's part, that alone would justify the attachment. This was the view taken by the court below: "A trial which was had on "on this issue resulted in the sustaining of the attachment; "that is, the charge made in the affidavit by the Moline Wagon "Company that Rummel had fraudulently conveyed or was "about fraudulently to convey the property in controversy to "hinder and delay creditors, was true." (Rec., 84.)

We do not think it was necessary to offer the record of this judgment in evidence. It was a part of the record in the cause, as much so as the affidavit for attachment. In *French* v. *Sale*, 60 Miss., 516, it is held that on the trial of an interplea it is not necessary to offer in evidence record of judgment sustaining the attachment, because it is part of the record before the court. The court cites Drake on Attachments, § 658*a*, to the effect that a garnishment proceeding under an attachment writ, though in some sense a distinct suit, belongs to and is part of the record in the attachment suit, and says that the same view applies to claim of property levied on under an attachment.

While attachment proceedings with their various incidents are purely statutory, and it is therefore not entirely safe to cite decisions from the courts of one state on cases arising under its statute in reference to questions in cases arising under the statute of another state, or to the practice in another state, we venture to cite this decision of the Mississippi court with all the greater confidence, because an inspection of the record in

the case at bar shows that the proceedings under the plea in abatement, including all of the matters offered in evidence, form and are treated as a part of this record. And we submit that the verdict and judgment finding Rummel guilty of fraud, and overruling the plea in abatement, was properly before the court below as part of the record of the cause, and is properly before this court on this record.

Garnishment proceedings under an attachment writ are nearest in analogy to proceedings on an interplea in an attachment suit. They are in some sense distinct suits between the attaching creditor and the garnishee; and yet the defendant is to a certain extent a party to this proceeding and concluded by judgment against the garnishee in favor of the attaching creditor to the extent of this judgment. Such judgment is, however, not conclusive as to the whole amount of the indebtedness to the defendant, because that is not an issue in the garnishee proceeding properly.

Brown v. *Dudley*, 33 N. H., 515.
Bigelow on Estoppel, 131, 132, 133.
Drake on Attachments, § 711.

Garnishment proceedings being also purely statutory, the same difficulty arises in applying decisions in these cases generally; but the rule may be stated that, so far as the defendant is directly concerned in the judgment against the garnishee, he is concluded by it.

Counsel has not in his argument discussed the question as to whether these interpleaders became, by filing their interplea, parties to the cause in such sense as to be bound by judgments thereafter rendered therein, nor the status of interpleaders in an attachment pooceeding under the Missouri statute, but has assumed that they were not parties, and relies upon the general rule that a judgment is only conclusive upon parties to the

cause. To this rule there are well-recognized exceptions, as in case of judgment against the principal in suits brought against a surety.

Stovall v. *Banks*, 10 Wall., 583.
Stoops v. *Wittler*, 1 Mo. App., 420.

Another exception is where the party against whom the judgment is offered in evidence was nominally not a party to the cause, but was really the party in interest, and made the real defense. This exception applies, to some extent, to the case at bar. The issue tried on the plea in abatement was whether Rummel had made this mortgage with fraudulent intent. The interpleaders were parties in interest in sustaining the mortgage and defeating the attachment. The interplea and plea in abatement were filed at about the same time in the cause by the same attorneys (Rec., 42, 43); and the attorneys who appeared on the trial of the plea in abatement for the defendant took part in the trial of the interplea for the interpleaders.

The argument also assumes that the interpleaders had no right to appear in the trial of the plea in abatement or to control or defend this proceeding. There was, on the contrary, no reason why the two issues should not have been tried at the same time and before the same jury. Neither the statute nor the practice forbids this. The position of claimants in an attachment proceeding is perhaps as fully stated by Waples on Attachment, pages 480 to 485. They are not allowed to delay the trial of the cause by their interplea, and "must always be ready for trial." The Missouri practice is to try the interplea first, *Ladd* v. *Couzins*, 35 Mo., 516; but there is no reason why it should not be tried at the same time with the plea in abatement, and where the interpleaders are content to allow the plea in abatement to be tried separately and before their interplea, they must be held concluded and bound by the judg-

ment rendered thereon, so far as the finding and judgment applies to their claim under the interplea.

The court instructed the jury that Rummel's intention in making the mortgage to Huiskamp Brothers was found to have been fraudulent, "but this, of itself, is not sufficient to "make the mortgage fraudulent as to Huiskamp Brothers. "Huiskamp Brothers may have known, when they accepted "the mortgage from Rummel, that he intended to defraud, "hinder and delay his creditors by it; *yet if they in no way* "*participated in the fraud of Rummel, did no act to aid or* "*assist him in the illegal act, and intended to secure their debt* "*only, the mortgage as to them is valid, and they are entitled to* "*the benefit of the same.* * * *" (Rec., 86.)

This portion of the instruction is a sufficient answer to the exception tnken, that the instruction gives effect to the judgment, not only as establishing Rummel's fraud, but as tending to affect the question of the intent with which the intervenors received the conveyance. The court submitted the question to the jury as to the good faith of the interpleaders in taking the conveyance on all the evidence. The court called their attention to the various matters appearing in evidence and instructed them that "the whole (should be) judged of under "the caution enjoined by the judgment which determined that "Rummel had acted fraudulently in making the mortgage. "In dealing with Rummel under these circumstances, Huis-"kamp Brothers must exercise the utmost good faith, and their "failing to do so deprives them of any right under the mort-"gage."

We submit that the question as to whether the interpleaders took this mortgage in good faith and without a fraudulent intent to aid and assist Rummel in hindering and delaying his creditors was submitted to the jury as fairly as the interpleaders were entitled to ask.

It is not necessary to refer in this connection to the rule, that even though there may have been some error in the instruction, yet if the court can see that the verdict has been in accordance with substantial justice between the parties, it will not reverse the case for such error. The facts to which the court calls the jury's attention in reference to the making of this mortgage were such as to warrant him in telling the jury that under the circumstances the interpleaders must have exercised the utmost good faith.

The element of fraud on Rummel's part in making the conveyance was, as counsel states, material in determining whether the mortgage was fraudulent as against the interpleaders. It was not sufficient to make the mortgage fraudulent as to the interpleaders, and so the court instructed the jury even more broadly than they were entitled to, telling them that even if they knew when they accepted the mortgage that Rummel intended to defraud, hinder and delay his creditors by it, yet if they did not participate in his fraud or do some act to aid or assist him in it, the mortgage would be valid as to them. It was, however, a material factor in the case, and the evidence that tended to show fraud on his part, no matter what might be its character, whether the conclusive evidence of this judgment if properly admissible as against them for this purpose, or evidence of his acts or declarations, would be before the jury for their consideration.

The real question is whether this judgment was conclusive on the plaintiffs in error, as to Rummel's fraudulent intent in making this mortgage. If so, then it would be necessarily before the jury, just as any other evidence tending to show fraud on his part, for their consideration in determining the intent of the plaintiffs in error in taking this mortgage; and the instruction places the proper restriction upon the jury in considering it.

III.

THE SEVENTH AND NINTH ASSIGNMENTS OF ERRORS.

The sixth instruction which the plaintiffs in error asked, to the effect that if the partnership was not in fact dissolved, but the interpleaders had been told of and believed in its dissolution, then Rummel in giving the mortgage was acting as an ostensible partner, and it is as valid as if he had made it in the name of Rummel & Son, was properly refused; because it ignores the question as to whether the partners had not continued to hold this property as partnership property, and ignores the question as to whether the interpleaders themselves did not know that this property was held as partnership property and ostensibly dealt with as such.

The eighth instruction asked for plaintiffs in error, to the effect that the act of Rummel in making the mortgage was a representation that he had authority to convey title in his own name, and that the mortgage should be treated as if it were a conveyance by the partnership to secure a partnership debt, was properly refused; because it was not applicable to the evidence before the jury or to the claims asserted by the interpleaders. They claimed throughout that they were the creditors of Rummel individually, and that he in his individual capacity was the owner of the property in controversy, and therefore his mortgage conveyed a good title, and sought to show that the partnership was dissolved and not in existence. It was not claimed or asserted by them, and no evidence was offered tending to show that this conveyance was the act of the partnership, or authorized by it. The evidence tended to show that the firm was doing business under the firm name, and this property was held as partnership

property; the mortgage is made by Jacob Rummel, individually, to secure his individual notes, and the validity of the conveyance depends entirely upon whether the property was partnership property or belonged to him individually. The only representation that can be gathered from the fact that he executed this mortgage and delivered it to the plaintiffs in error, would be, that he claimed to be the owner individually of this property; and certainly no inference can be drawn from the mortgage itself that he claimed to have executed it with authority from the partnership, or as the act of the partnership.

The case of *Keck* v. *Fisher*, 58 Missouri, 532, is cited by counsel to the effect that one partner could execute and deliver a mortgage upon partnership property to secure a partnership debt. In that case the partner executed a mortgage in the name of the partnership to secure a partnership debt, and claimed authority to make the conveyance for the partnership. It cannot be doubted that a partner has authority to act as the agent of the partnership in reference to almost every transaction, and can sell or pledge its property as its agent to secure its debts; but this does not apply where the partner is not claiming to act for the partnership or in its name, or as its agent, but is acting for himself in his individual capacity. In such case the test of the validity of his conveyance is the ownership of the property. If, in fact, it was partnership property, then the conveyance is invalid, except in the case of a grantee who, for a valuable consideration, without notice that the property is partnership property, and in good faith, takes the conveyance. And a grantee, who claims to be a private creditor of the partner, and who takes a mortgage made by a partner in his individual capacity, and not as the agent of or in the name of the partnership, cannot be heard to assert in defense of the conveyance on the one hand that the debt secured by the mortgage was

the grantor's private debt, and the property belonged to the partner individually, and was not partnership property, and therefore the conveyance was valid, and on the other hand that the property belonged to the partnership, but the conveyance must be treated as the act of the partnership, and therefore it is valid.

The interpleaders in this case have taken the position that the property belonged to Rummel individually, and that the partnership itself was not in existence; and therefore these two instructions were not applicable to the case before the jury, nor to the facts in evidence, and were properly refused.

We respectfully submit that there are no errors in this record that require the reversal of the judgment, and that it should be affirmed; and we ask the kind forbearance of the court for our too extended discussion of the questions in the case.

Respectfully submitted.

CHARLES M. OSBORN,
S. A. LYNDE,
Attys. for Defendant in Error.

121-310

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

No. 194.

HENRY C. HUISKAMP, HERMAN J. HUISKAMP, AND LUKE HUISKAMP, PARTNERS AS HUISKAMP BROTHERS, INTERPLEADERS, PLAINTIFFS IN ERROR,

vs.

THE MOLINE WAGON COMPANY, DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Western District of Missouri.

SUPPLEMENTAL BRIEF OF POINTS AND AUTHORITIES FOR THE DEFENDANT IN ERROR.

C. M. OSBORN,
S. A. LYNDE,
Att'ys for Defendant in Error.

JUDD & DETWEILER, PRINTERS.

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vs.

THE MOLINE WAGON COMPANY, DEFENDANT IN ERROR.

I.

1. If there was no legal dissolution of the partnership and the partners continued to hold the property in controversy as partnership property and to deal with it ostensibly as firm property it remained partnership property so far as creditors are concerned who knew nothing of a division of the property and who trusted the firm.

2. Where partners continue to carry on business as partners and under the firm name and to hold property and deal with it ostensibly as partnership property, such property remains partnership property notwithstanding a secret

agreement of division of property may have been entered into between the partners, and so far as creditors are concerned who knew nothing of such agreement and gave credit to the firm, the partners, and any purchaser or grantee from them in their individual capacity with notice that the property was being held and ostensibly dealt with by the partners as partnership property, will be equitably estopped from denying its status as partnership property. "The creditors who had dealt with the firm under the belief, superinduced by the acts of all the parties, that they were partners, were entitled to rely not only upon the personal responsibility of all, but upon the equitable security in the partnership effects to be worked out through them."

Story on Partnership, §§ 64, 65.
Kelley *vs.* Scott, 49 N. Y., 595, 599.
Hillman *vs.* Moore, 3 Tenn. Ch., 454, 458.

See also—

Ex parte Hayman, L. R., 8 Chan. Divis., 11.
In re Rowland, L. R., 1 Chan. App., 421.
French *vs.* Chase, 6 Greenleaf, 166.
Lord *vs.* Baldwin, 6 Pick., 348.
Van Valen *vs.* Russell, 13 Barb., 590.
Elliot *vs.* Stevens, 38 N. H., 311.

3. By a *bona fide* agreement of dissolution and division of partnership property among the partners, or by a *bona fide* transfer of the partnership property to one partner, it is converted into the individual separate property of the partner, wholly free from the claims of the joint creditors, and the

partnership creditors are deprived of their quasi-lien or derivative equity.

Story on Partnership, §§ 358, 360.
3 Kent's Com., 65.
Case *vs.* Beauregard, 99 U. S., 119.
Fitzpatrick *vs.* Flanagan, 106 *Id.*, 648.
Schmidlapp *vs.* Currie, 55 Miss., 597.

4. To be valid, however, such transfer or agreement of dissolution and division of the partnership effects must be *bona fide;* and if not it is invalid and a nullity, save only in the case of a *bona fide* purchaser for a valuable consideration without notice of the *mala fides* of the transaction.

Case *vs.* Beauregard, 99 U. S., 125.
Howe *vs.* Lawrence, 9 Cush., 555, 556.
Wilson *vs.* Robertson, 21 N. Y., 587.
Ransom *vs.* Van Deventer, 41 Barb., 307.
Ex parte Williams, 11 Vesey, 3, 5.
In re Waite, 1 Lowell, 207.

5. A secret agreement of this character between the partners which is not made public or accompanied by public notice and by some open and visible evidence of its existence is fraudulent and void.

In re Tomes, 19 Nat. Bank Reg. Reps., 37.
Richardson *vs.* McFarland, 10 *id.*, 381.
Flack *vs.* Charon, 29 Md., 312.
Elliot *vs.* Stevens, 38 N. H., 311.
See, also, *In re* Sheppard, 3 Ben., 347.
In re Kruger, 2 Lowell, 66.
In re Dunkle, 7 Nat. Bank Reg. Reps., 107.
Kelley *vs.* Scott, 49 N. Y., 595.

6. A conveyance or mortgage of partnership property made by a partner in his individual behalf to satisfy or secure the payment of his individual debts is fraudulent and void as to the partnership and its creditors.

Story on Partnership, § 132.
3 Kent's Com., 44.
Rogers *vs.* Batchelor, 12 Peters, 221.
Locke *vs.* Lewis, 124 Mass., 1.
Livingston *vs.* Roosevelt, 4 Johns., 251.
Dob *vs.* Halsey, 16 *id.*, 34.
Flanagan *vs.* Alexander, 50 Mo., 50.
Ackley *vs.* Staehlin, 56 Mo., 558.
Price *vs.* Hunt, 59 Mo., 258.
Helliker *vs.* Francisco, 65 Mo., 598.
Phelps *vs.* McNulty, 66 *id.*, 555.
Johnson *vs.* Hervey, 70 Me., 74.
Cotzhausen *vs.* Judd, 43 Wis., 213.
Hurt *vs.* Clarke, 56 Ala., 19.

Save only where the grantee or person dealing with the partner did not have notice that the property was partnership property, or that the partner was abusing his powers and authority as a member and agent of the partnership.

Locke *vs.* Lewis, 124 Mass., 1.
Livingston *vs.* Roosevelt, 4 Johns., 251.

If he did have notice, the transaction is deemed *mala fide* on his part, and held to be a nullity.

Story on Partnership, § 132.
3 Kent's Com., 42, 43.
Donovan *vs.* Dymond, 3 Wood, C. Ct., 141.
Cotzhausen *vs.* Judd, 43 Wis., 215.

II.

The judgment on the plea in abatement sustaining the attachment and overruling the plea was conclusive evidence of fraud on Rummel's part in executing and delivering the mortgage under which the interpleaders claim title, as against the interpleaders who had become parties to the cause and had interpleaded therein prior to the trial of the plea in abatement. The interpleaders became by their interplea parties to the cause, and were parties and privies in interest with Rummel, their grantor and defendant in the cause.

Revised Statute, Missouri, section 449: "Any person claiming property, money, effects, or credits attached, may interplead in the case, verifying the same by affidavit, and issues may be made upon such interplea, and shall be tried as like issues between plaintiff and defendant, and without any unnecessary delay."

See as to interplea under this statute—

Richardson *vs.* Jones, 16 Mo., 177.
Richardson *vs.* Watson, 23 *Id.*, 34.
Brennan *vs.* O'Driscoll, 33 *Id.*, 372.
Ladd *vs.* Cousins, 35 *Id.*, 516.
State, etc., *vs.* Langdon, 57 *Id.*, 354.
McElfatrick *vs.* Macauley, 15 Mo. App., 102.
Wolff *vs.* Vehhe, 17 *Id.*, 36.

See also—

French *vs.* Sale, 60 Miss., 516.
Drake on Attachments, §§ 658*a*, 711.
Brown *vs.* Dudley, 33 N. H., 515.
Bigelow on Estoppel, 131, 132, 133.

And (as exception to the general rule) that judgment against the principal is conclusive on the surety.

Stovall *vs.* Banks., 10 Wall., 583.

Stoops *vs.* Wittler, 1 Mo. App., 420.

Strong *vs.* Ins. Co., 62 Mo., 289.

And as to status of party in interest, though not party to the record.

Wood *vs.* Easel, 63 Mo., 193.

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